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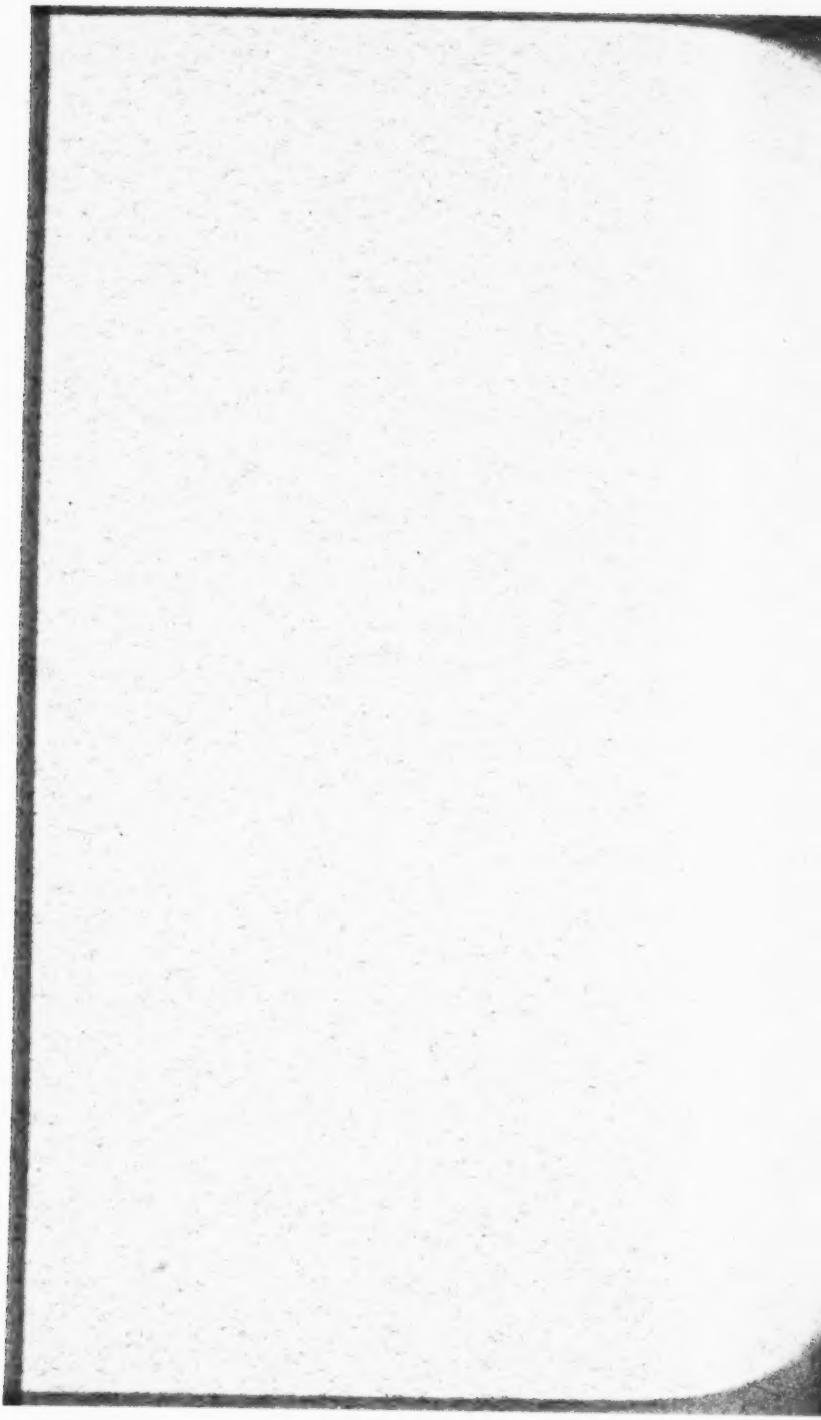
Filed Feb. 19, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1896–97.

THE UNITED STATES, APPELLANT,
v.
THE JOINT TRAFFIC ASSOCIATION et al., appellees. } No. 341.

BRIEF FOR THE UNITED STATES.



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STATEMENT.

THE AGREEMENT.

On November 19, 1895, thirty-one railroad companies, appellees herein, entered into an agreement, to take effect January 1, 1896, by which they constituted themselves an association to be known as The Joint Traffic Association (Rec., pp. 15–38).

The purposes of the agreement, as stated in the preamble (Rec., p. 17), were—

> To aid in fulfilling the purposes of the interstate-commerce act, to cooperate with each other and adjacent transportation associations, *to establish and*

maintain reasonable and just rates, fares, rules, and regulations on state and interstate traffic, to prevent unjust discrimination, and to secure the reduction and concentration of agencies and the introduction of economy in the conduct of the freight and passenger service.

Article I (Rec., p. 19) provides that—

The affairs of The Association shall be administered by

A Board of Control;

A Board of Managers, called The Managers;

A Board of Arbitration, called The Arbitrators;

and that the term "traffic" wherever used shall cover both freight and passenger traffic.

Article II (Rec., p. 19) defines the traffic "*subject to The Association*" as follows:

> SECTION 1. *The Association shall have jurisdiction over all competitive traffic* (subject to the exceptions noted in section 2 of this article) which passes to, from, or through the western termini of the trunk lines, viz: Toronto, Canada; Suspension Bridge, Niagara Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction, Dunkirk, and Salamanca, N. Y.; Erie, Pittsburg, and Allegheny, Pa.; Bellaire, Ohio; Wheeling, Parkersburg, Charleston, and Kenova, W. Va., and Ashland, Ky., and such other points as may hereafter be designated by The Managers as such termini; also all traffic which may pass through other junctions of the companies parties hereto which is included in passing through any of the termini or junctions above or hereafter specified, and such other traffic as may by common consent of the parties be hereafter included herein.
>
> SEC. 2. The following shall not be included:
>
> (*a*) Coal, coke, iron ore, mill cinder, limestone, and petroleum, crude or refined.

(*b*) Traffic destined to or coming from Florida, Georgia, North and South Carolina, Virginia, and West Virginia south of the south line of the Chesapeake and Ohio Railway.

Article III (Rec., p. 20) creates *the Board of Control* and defines its powers. *It is composed of the presidents* of the companies forming The Association. It fixes the salaries of any commissioners appointed by The Managers, and the salaries of other officers and employees of The Association shall be subject to its review and approval. *It selects The Arbitrators* and fixes their compensation and term of service. It appoints an auditing committee to examine and report upon the accounts of The Association. It prescribes the conditions under which additional railways may become parties to The Association. *It alone considers appeals* from the action of The Managers on all questions *as to rates or fares*, except differentials, but pending *decisions by the Board of Control the decisions and orders by The Managers shall prevail.*

Article IV (Rec., p. 22) provides for *the Board of Managers*, consisting of one member from each of nine trunk-line systems, which are defined, namely: The Baltimore and Ohio, the Chesapeake and Ohio, the Erie, the Grand Trunk, the Lackawanna, the Lehigh Valley, the Pennsylvania, the Vanderbilt, and the Wabash.

Article V (Rec., p. 25) provides that The Managers shall have their principal office in New York City, shall elect a chairman, shall adopt their rules and perfect their organization, and then provides:

SEC. 4. *The Managers shall construe this agreement and all resolutions.*

SEC. 5. *All applications for differentials and for*

CHANGES *in rates, fares, charges, and rules shall be made to The Managers.* Their action upon differentials and upon all questions except as to rates and fares shall be subject to appeal, but only to The Arbitrators. *Their action as to rates and fares* (except differentials) *shall be subject to appeal only to the Board of Control. Decisions and orders of The Managers shall be complied with until such appeals are decided.*

Articles VII (Rec., p. 27) and VIII (Rec., p. 29), relating to rates, fares, charges, and rules, read as follows:

ARTICLE SEVEN.—RATES, FARES, CHARGES, AND RULES.

SECTION 1. The duly published schedules of rates, fares, and charges, and the rules applicable thereto now in force and authorized by the companies parties hereto upon the traffic covered by this agreement (and filed with the Interstate Commerce Commission as to such of said traffic as is interstate), *are hereby reaffirmed* by the companies composing The Association, and the companies, parties hereto, shall, within ten days after this agreement becomes effective, file with The Managers copies of all such schedules of rates, fares, and charges, and the rules applicable thereto.

SEC. 2. *The Managers shall, from time to time, recommend such changes in said rates, fares, charges, and rules as may be reasonable and just and necessary for governing the traffic covered by this agreement and for protecting the interests of the parties hereto therein, and the failure to observe such recommendations by any party hereto, as and when made, shall be deemed a violation of this agreement. No company, party hereto, shall,* through any of its officers

or agents, *deviate from or change the rates, fares, charges*, or rules herein reaffirmed or *so recommended by The Managers*, except by a resolution of its board. The action of such board shall not affect the rates, fares, charges, or rules disapproved except to the extent of its interest therein over its own road. A copy of the resolution of the board of any company, party hereto, authorizing any such change shall be immediately forwarded by the company making the same to The Managers, and such change shall not become effective until thirty days after the receipt of such resolution by The Managers. *The Managers, upon receiving such notice, shall act promptly upon the same for the protection of the parties hereto.*

SEC. 3. The powers conferred upon The Managers shall be so construed and exercised as not to permit violation of the interstate commerce act, or any other law applicable to the premises, or any provision of the charters, or the laws applicable to any of the companies parties hereto, and The Managers shall cooperate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares, charges, and rules established hereunder.

ARTICLE EIGHT—PROPORTIONS OF COMPETITIVE TRAFFIC.

The Managers are charged with the duty of securing to each company party hereto equitable proportions of the competitive traffic covered by this agreement so far as can be legally done.

By Article IX (Rec., p. 29) it is provided that "The Managers shall decide and impose the course which shall be pursued with connecting companies not parties to this agreement which fail or decline to observe the rate, fares,

charges, and rules established under this agreement. The interest of companies, parties hereto, injuriously affected by such action of The Managers, shall be accorded reasonable protection in so far as The Managers can legally do so." The Managers may determine the divisions of rates and fares between connecting companies, parties hereto, and between them and connections not parties hereto.

Article X (Rec., p. 30) recognizes that the limitation or termination of the powers of through commission freight lines is required.

Article XI (Rec., p. 31) authorizes The Managers to organize such joint freight and passenger agencies as they may deem advisable.

Article XII (Rec., p. 31) provides that no soliciting or contracting passenger or freight agency shall be maintained by any company in connection with the traffic covered by this agreement, except with the approval of The Managers, and no person objectionable to The Managers shall be employed or continued in such agency.

Article XIII (Rec., p. 32) directs The Managers to define the authority and duties of all contracting and soliciting freight and passenger agents, and empowers them to determine the number of such persons to be employed. Such agents as The Managers appoint shall be carried on the pay roll of The Association. The Grand Trunk Company may appoint soliciting agents in Canada to meet the competition of Canadian lines not parties hereto, but such persons shall be subject to the rules of The Managers.

Article XIV (Rec., p. 14) authorizes The Managers, on information or complaint, to investigate any matter

and require the attendance of the officials or employees of any company, and Article XV (Rec., p. 14) binds the companies to furnish to The Managers all reports, papers, and information relating to the traffic covered by the agreement which may be requested.

Articles XVI and XVII, defining the penalties and creating the expense fund, read as follows (Rec., pp. 33–35):

ARTICLE SIXTEEN—FORFEITURES FOR VIOLATIONS OF AGREEMENT.

For any action by any party hereto which in the judgment of The Managers constitutes a violation of this agreement the offending company shall forfeit to The Association a sum to be determined by The Managers, not exceeding five thousand dollars, but where the gross receipts of the transaction in which this agreement is violated shall exceed five thousand dollars the offending party shall, at the discretion of The Managers, forfeit a sum not exceeding such gross receipts. Such forfeitures shall be applied to the payment of the expenses of The Association, except that the offending company shall not participate in such application of its own forfeiture.

ARTICLE SEVENTEEN—DEPOSITS, EXPENSE FUND, AND PROVISION FOR FORFEITURES.

SECTION 1. Upon the call of The Managers after this agreement becomes effective, each company party hereto shall deposit with them the sum of five thousand dollars, and in addition thereto, upon their like call, such further sums monthly, based upon the gross earnings of each company party hereto from the traffic covered hereby, as The Managers

may decide to be necessary to defray the expenses of The Association, including the salaries of the commissioners and arbitrators, and to provide for such forfeitures as may be adjudged.

SEC. 2. Any forfeiture made by any company party hereto, under the rules, shall be taken from the sums contributed by such company and charged in whole to its account. If this deposit at the time, exclusive of its said original contribution of five thousand dollars, shall be insufficient, it shall pay to The Managers such deficiency within fifteen days after the forfeiture is finally adjudged.

SEC. 3. The balance of said deposits remaining at the expiration of this agreement shall be divided between the companies then parties hereto in the ratio in which they have contributed, less the amounts forfeited.

Article XVIII (Rec., p. 35) provides that any party retiring from the agreement, except by unanimous consent, shall not be entitled to any refund from the residue of deposits remaining at the close of the agreement.

Article XIX (Rec., p. 36) invests the Board of Arbitration, consisting of two persons, with jurisdiction to hear appeals on all questions except the determination of rates and fares, and makes its decision final.

Article XX (Rec., p. 37) provides that amendments to the agreement can only be made by the unanimous vote of the parties to it.

Article XXI (Rec., p. 37) provides that the agreement shall take effect January 1, 1896, and continue in existence for five years thereafter. After said period any company may retire therefrom upon giving ninety days' written notice of its desire to do so.

THE SUIT.

On January 7, 1896, the United States as complainant filed in the circuit court of the United States for the southern district of New York, through the United States attorney for that district, and under the direction of the Attorney-General, its bill of complaint against The Joint Traffic Association and the thirty-one railroad companies composing it, for the purpose of having the agreement set aside and declared null and void and of enjoining the defendants from operating under it.

THE BILL. (Rec. pp. 2–14.)

The bill, after averring the incorporation of the railway companies, alleges that at the time of making the agreement, and ever since, they were and are common carriers engaged in interstate commerce; that the nine trunk-line systems which they compose, on and prior to the making of the agreement, operated separate railroad lines or systems engaged in interstate and foreign commerce, and were in active competition with each other for such traffic, and "furnished to all persons engaged in such traffic or travel among the States and Territories of the United States separate and independent and competitive lines of transportation in respect to the traffic;" that the defendant railway companies, for certain unlawful purposes which are named, to wit (Rec. p. 6):

> To restrain trade and commerce among the several States;
>
> To restrain and prevent competition among the

said railroads in respect to all the interstate trade and commerce, hereafter more particularly described;

To deprive the public engaged in such interstate trade and transportation of the facilities and advantages which the said public had theretofore enjoyed from the independent competition of said railroads;

To establish and maintain rates of freight and passenger transportation fixed arbitrarily and uninfluenced by competition—

entered into "a certain unlawful contract, agreement, combination, and conspiracy to restrain trade and commerce among the several States," being the agreement already described, a copy of which is made a part of the bill.

An amendment to the bill, filed March 9, 1896 (Rec. p. 48), avers that, on or about December 26, 1895, the Interstate Commerce Commission notified the Attorney-General that it considered the agreement to be in conflict with the interstate commerce act, and requested him to direct the United States attorney to prevent its execution, whereupon the Attorney-General directed the United States attorney to institute the necessary proceeding to to have the agreement declared null and void, and the parties to it prevented from carrying it into effect, on the ground that it appeared to be in violation of the interstate commerce act and also in violation of the "anti-trust law," and on all other existing grounds.

THE ANSWERS.

The answers, which are alike in substance, admit the allegations of incorporation, admit the defendant railway companies are common carriers, and were and are en-

gaged in interstate and foreign commerce, and admit that at the time of making the agreement "the several railway companies constituting what are termed in said agreement, respectively, the Baltimore and Ohio, the Chesapeake and Ohio, the Erie, the Grand Trunk, the Lackawanna, the Lehigh Valley, the Pennsylvania, the Vanderbilt, and the Wabash systems, with their leased, controlled, or operated lines, *owned, operated, and controlled separate railway systems or lines engaged with their connections independently in commerce among the States and Territories of the United States and with foreign nations, and were in active competition with each other for such traffic, both in freight and passengers, and furnished to all persons engaged in such traffic or travel among the States and Territories of the United States separate and independent and competing lines of transportation in respect to the travel in said bill mentioned.* (*Par. 3, Rec., p. 64.*)

The execution of the agreement is admitted, but there is a denial of any unlawful intent, and an elaborate argument designed to show that the restraint upon trade and commerce imposed by the agreement is reasonable and necessary. The justification set forth may be briefly summarized as follows:

1. Prior to the interstate commerce act the growth of railroads had rendered certain joint action necessary to meet the needs of commerce.

2. To carry out the prohibitions of the interstate commerce act against unjust discriminations and undue preferences, concert of action among the railroads is absolutely necessary.

3. Unrestricted competition invites unjust and secret discrimination, and inevitably leads to those practices prohibited by the interstate commerce act, through which in the end the weaker roads will be forced into bankruptcy. Such competition is inconsistent with those uniform and stable rates and fares, just and reasonable to carrier and shipper, which it is the object of the commerce act to secure and maintain.

THE PROCEEDINGS BELOW.

The case was heard on bill and answer before the circuit court (Judge Wheeler), and the bill was dismissed. The Government appealed to the circuit court of appeals, which (Judges Lacombe and Wallace sitting) affirmed the judgment of the circuit court. A short opinion by Judge Wheeler is printed in the record, page 211. No opinion was delivered by the circuit court of appeals. The case comes here on the appeal of the Government from the decree of the circuit court of appeals.

Under the decision of this court in the Trans-Missouri Case, the averments of intent in the bill and the denials and counter averments in the answers, are immaterial. The question to be discussed is the meaning and effect of the agreement itself. The Government case rests upon the agreement, its legal effect and operation.

> Although the case is heard on bill and answer, thus making it necessary to assume the truth of the allegations in the answer which are well pleaded, yet the legal effect of the agreement itself can not be altered by the answer, nor can its violation of law be made valid by allegations of good intention

or of desire to simply maintain reasonable rates; nor can the plaintiffs' allegations as to the intent with which the agreement was entered into be regarded, as such intent is denied on the part of the defendants; and if the intent alleged in the bill were a necessary fact to be proved in order to maintain the suit, the bill would have to be dismissed. In the view we have taken of the question, the intent alleged by the Government is not necessary to be proved. The question is one of law in regard to the meaning and effect of the agreement itself, namely: Does the agreement restrain trade or commerce in any way so as to be a violation of the act? (*United States* v. *Freight Association*, 166 U. S., 290, 341.)

ARGUMENT.

I.

The agreement violates the anti-trust law, because it creates an association of competing trunk line systems, to which is given jurisdiction over competitive interstate traffic, with power, through a central authority, aided by a skillful scheme of restrictions, regulations, and penalties, to establish and maintain rates and fares on such traffic and prevent competition, thus constituting a contract in restraint of trade or commerce among the several States, as defined by this court in the Trans-Missouri Case (166 U. S., 290).

The act of July 2, 1890 (26 Stats., 209), entitled "An act to protect trade and commerce against unlawful restraints and monopolies," provides:

> SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. * * *
>
> SEC. 2. Every person who shall monopolize, or

attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, etc.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition, setting forth the case, and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed as soon as may be to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

In the Trans-Missouri Case this court held:

1. That the anti-trust law applies to common carriers by railroad. (166 U. S., bottom p. 326.)

2. That it prohibits and renders illegal *all* agreements in restraint of interstate trade and commerce, whether the restraint be reasonable or unreasonable. (166 U. S., 327, 341.)

The question, then, is whether the agreement under consideration operates as a restraint upon interstate trade and commerce. The prohibition of the anti-trust act, as construed by this court, applies to all contracts in restraint of trade or commerce, and is not confined to those in unreasonable restraint.

For convenience of reference I have printed in parallel columns, as an appendix to this brief, the agreement creating the Trans-Missouri Freight Association and that creating the Joint Traffic Association. A comparison of these two agreements will convince the court, not only that the Joint Traffic agreement operates to restrain trade and commerce by preventing competition in the same illegal way the Trans-Missouri did, but that it contains many additional illegal and objectionable provisions, inserted for the purpose of more effectually restraining competition and maintaining rates and fares.

The Trans-Missouri agreement declares that it is formed, among other things, "for the purpose of mutual protection, by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic, both through and local." (Preamble, 166 U. S., 292.)

The Joint Traffic agreement was entered into, among other purposes, "to establish and maintain reasonable and just rates, fares, rules, and regulations on State and interstate traffic." (Preamble, Rec., p. 17.)

The Trans-Missouri agreement included "all traffic competitive between any two or more members hereof," passing between certain points. (Art. I, 166 U. S., 293.)

The Joint Traffic agreement vests The Association with

"jurisdiction over all competitive traffic" (both freight and passenger) passing between certain termini. (Article 2, Rec., p. 19.)

The Trans-Missouri agreement provides (art. 2, sec. 1) for the election of a chairman; (art. 2, sec. 2) that "each road shall designate to the chairman a person who shall be held personally responsible for rates on that road" (art. 2, sec. 3); for the appointment of a committee "to establish rates, rules, and regulations on the traffic subject to this association, and to consider changes therein, and make rules for meeting the competition of outside lines." From the conclusions of this committee, when divided in opinion, an appeal is provided to the managers of the lines, and if they disagree, the matter is to be arbitrated. (166 U. S. 294.)

The Joint Traffic agreement provides that the rates and fares in force shall control, subject to the authority of The Managers to change them from time to time and establish new rates and fares. (Art. 7, Rec., p. 28.) From the action of The Managers on rates and fares an appeal lies to the Board of Control, but pending the decision by this board the order of The Managers shall prevail. (Art. 3, sec. 7, Rec., p. 22.) The authority to change rates and fares and establish new ones is purposely conferred in covert language, thus:

> The Managers shall from time to time *recommend* such changes in said rates, fares, charges, and rules as shall be reasonable and just, and necessary for governing the traffic covered by this agreement and for protecting the interests of the parties hereto therein. (Art. 7, sec. 2, Rec., p. 28.)

While the agreement says "recommend," it means "make." The so-called "recommendation" of The Managers is not required to be submitted to any person or company. No action on the part of anybody else is required to give force or effect to the "recommendations" of The Managers. The word "recommend" is used to disguise the power conferred, and afford ground for the argument (used here) that The Managers have no power to change rates; nevertheless, the "recommendation" operates as the actual changing of rates and the fixing of new rates. The failure of any company to observe the "recommendations," that is, abide by the new rates established by The Managers, operates as a violation of the agreement. Following the power conferred on The Managers to "recommend" changes in rates when necessary "for protecting the interests of the parties" to the agreement, comes this language:

> And the failure to observe such recommendations by any party hereto *as and when made* shall be deemed a violation of this agreement. No company party hereto shall, through any of its officers or agents, deviate from the rates, fares, charges, or rules here reaffirmed [this refers to the existing schedules adopted by the agreement], *or so recommended* [that is, fixed] by The Managers, except by resolution of its Board.

In this connection let the court consult other provisions of the agreement. Article V relates to the duties and powers of The Managers. Section 5 (Rec., p. 26) of this article provides—

> All applications for differentials and for changes in rates, fares, charges, and rules shall be made to

> The Managers. * * * Their action as to rates and fares (except differentials) shall be subject to appeal only to the Board of Control. Decisions and orders of The Managers shall be complied with until such appeals are decided.

What does this mean except that The Managers may change rates, subject to an appeal only to the Board of Control, composed of the presidents of the companies? The application "for changes in rates" must be made to the body authorized to change rates, namely, The Managers. The Managers do not recommend action upon such applications, *but act*, and "their action as to rates and fares shall be subject, to appeal *only* to the Board of Control." There is no provision for an appeal to the Boards of Directors of the different companies. The competitive traffic is made subject to The Association. The Association is formed to establish and maintain the rates; The Association in doing this acts through The Managers, with an appeal *only* to the Board of Control.

The Trans-Missouri agreement (art. 2, sec. 6, 166 U. S., 295) allows each member, at its peril, to make, without notice, such rate as may be necessary to meet the competition of outside lines. Such action must be reported to The Association, and if it shall decide the rate was not made in good faith, the member becomes subject to the penalty provided in the agreement.

The Joint Traffic agreement offers no such discretion to its members. No deviation from the rates adopted by the agreement or changed by The Managers can be made, except by resolution of the Board of Directors.

which must be forwarded to The Managers, and the change shall not become effective until thirty days after the receipt of such resolution by The Managers. The agreement then proceeds in this significant language (art. 7, sec. 2, Rec., bottom p. 28):

> The Managers, upon receiving such notice, shall act promptly upon the same, for the protection of the parties hereto.

Thus The Managers are enjoined to take immediate steps to discipline the company which violates the agreement by deviation from the rates established by The Association.

The Trans-Missouri agreement provides for a fine not exceeding $100 for each violation, the chairman to investigate and report violations to The Managers, who are to assess the penalties. (Art. 2, sec. 8, 166 U. S., 296.)

The Joint Traffic agreement provides a penalty, to be determined by The Managers, "not exceeding $5,000," but where the gross receipts of the transaction in which the agreement is violated shall exceed $5,000, the offending party shall, at the discretion of The Managers, forfeit a sum not exceeding such gross receipts." (Art. 16, Rec., p. 33.) The payment of the penalties or forfeitures is secured by deposits in advance. (Art. 17, Rec., p. 34.)

The combination of competing lines in one association for the purpose of establishing and maintaining rates, the selection of a central authority representing the competing lines authorized to fix and change rates, the liability of the members of The Association to penalties for deviations from the rates thus fixed, are provided for in each agreement. Each agreement operates as a restraint upon

commerce, because each limits and restricts competition. With respect to rates on traffic, there is a virtual consolidation of competing lines under each agreement. The rate is not fixed by the individual company or system, but by the committee or managers representing The Association of competing lines and systems. The companies abdicate, The Association dominates. So long as the companies stand by the agreement and observe its provisions, there can be no competition as to rates. Each association is by express terms given jurisdiction over the competitive traffic of the lines composing it. For what purpose? To control the traffic; to establish and maintain the rates. To do this is to prevent competition and thus restrain trade and commerce.

In the Trans-Missouri Case, Mr. Justice Peckham, speaking for this court, said (bottom p. 341):

> Does the agreement restrain trade or commerce in any way so as to be a violation of the act? We have no doubt that it does. The agreement on its face recites that it is entered into "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic, both through and local." To that end The Association is formed and a body created which is to adopt rates, which, when agreed to, are to be the governing rates for all the companies, and a violation which subjects the defaulting company to the payment of a penalty, and although the parties have a right to withdraw from the agreement on giving thirty days' notice of a desire so to do, yet while in force and assuming it to be lived up to, there can be no doubt that its direct, immediate, and necessary effect is to put a restraint upon trade or commerce as described in the act.

This language is used with respect to the Trans-Missouri agreement, but every word of it applies equally well to the joint traffic agreement. In each case an association is formed to establish and maintain rates on interstate traffic, a central authority is created to fix the rates, and a penalty provided for any company which deviates from the rates so fixed.

But as a contract in restraint of commerce, the Trans-Missouri agreement is crude and ineffective when compared with the Joint Traffic agreement. The Trans-Missouri provides a penalty for competition. The Joint Traffic goes further, and contains provisions designed to deprive companies of the means of competing, while removing the inducement to compete. Control of the soliciting and contracting freight and passenger agencies is placed in The Managers, who are authorized to organize joint agencies. This done, supervision of the sources of securing business being thereby given The Managers, they are charged with the duty of apportioning the competitive traffic equitably among the members of The Association. Let me call the attention of the court to the provisions for carrying into effect this admirable plan to suppress competition by handing all the competitive traffic over to The Managers, authorizing them to fix the rates, supervise the soliciting agencies, and finally see to it that each company gets its equitable proportion of the traffic covered by the agreement.

> It is recognized and agreed that economy in the operation of through cooperative and commission freight lines and the limitation or termination of many of their existing powers and functions are absolutely required, and the companies parties hereto

will actively cooperate with The Managers and so manage such lines as to accomplish such results. (Art. 10, Rec., p. 30.)

The Managers shall have authority to organize such joint freight and passenger agencies as they may deem desirable, provided that if such joint agencies are established they shall be so arranged as will give proper representation to each company party hereto. (Art. 11, Rec., p. 31.)

No soliciting or contracting passenger or freight agency shall be maintained, directly or indirectly, by any of the companies parties hereto, or by any freight line in connection with the traffic covered by this agreement, *except with the approval of The Managers;* and no person who is decided by The Managers to be objectionable shall be employed or continued in such agency. (Art 12, Rec., p. 31.)

SEC. 1. The Managers shall define the authority and duties of all persons acting as contracting and soliciting freight and passenger agents in relation to the traffic covered hereby, and, with due regard to the relative interests involved, they may determine the number of such persons to be employed. The parties hereto shall observe and enforce the orders of The Managers from time to time issued in that behalf.

SEC. 2. Such contracting and soliciting agents as The Managers appoint shall be carried upon the pay rolls of The Association.

SEC. 3. The Grand Trunk Company may appoint soliciting agents to be located at such points in Canada as may be necessary to meet competition of Canadian lines not parties hereto, but such persons shall in all respects be subject to the rules of The Managers (art. 13, Rec., p. 32).

By the fourteenth article (Rec., p. 33) The Managers are authorized, on information or complaint, to investi-

gate any matter, and require the attendance of the officials or employees; and in the fifteenth the companies bind themselves to furnish The Managers, when requested, all reports, papers, and information relating to the traffic covered by the agreement (art. 15, Rec., p. 33).

The companies having thus surrendered to The Managers the agencies formerly used in competing for the business covered by the agreement, the following article was inserted in order to secure to each company its fair share of the competitive traffic handed over to The Association:

ARTICLE VIII. (Rec., p. 29.)

Proportions of competitive traffic.

> The Managers are charged with the duty of securing to each company, party hereto, equitable proportions of the competitive traffic covered by this agreement so far as can be legally done.

In the lower courts there was much discussion as to whether this power and duty to apportion the competitive traffic does or does not constitute "a pooling of freights" within the prohibition of the fifth section of the interstate commerce act, which provides:

> It shall be unlawful for any common carrier * * * to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof.

It is immaterial whether it does or does not. The provision is an auxiliary one, designed to strengthen the

agreement, but not essential to its existence or operation. It may be rejected without destroying the agreement. The contract in restraint of trade is the agreement creating The Association to establish and maintain rates on competitive traffic fixed arbitrarily and without competition. Article VIII offers a sort of guaranty to the members that each company will get its fair share of competitive business, whether it does or does not compete. Of course the purpose is to remove the inducement to compete. An agreement to apportion traffic operates much the same as one to divide earnings. Railroads which pool their earnings have no inducement to compete. All the individual company earns goes into the pool, and it only gets its share after all. So where the traffic or business is pooled, if a company, by competing, gets more than its share, it must yield the excess by permitting a diversion of traffic from its line to lines which are short. A strict account is kept of the traffic carried by each trunk line. If the traffic of a particular line exceeds its percentage, the line is deemed "over," and must account for the excess to the lines which are "short."

The pooling of freights and the division of earnings were prohibited by the anti-pooling provisions of the interstate commerce act, not because bad in themselves, but because they are used as means to an end, and this end is the suppression of competition and the maintenance of arbitrary rates. An agreement to pool freights and divide earnings removes the object of competition; the result is rates fixed independent of competition. In prohibiting pooling Congress did not make it a condi-

tion that the rates established and maintained under a pooling agreement should be unreasonable. It sufficed they would be arbitrary, uninfluenced by competition. The public would be placed at the mercy of the traffic managers.

So, too, in the case of a contract in restraint of trade, prohibited by the anti-trust law; it is enough if the agreement interferes with those natural laws which ordinarily determine rates; it is enough if it restricts competition; it is enough if it puts it in the power of the combined railroads arbitrarily to fix rates. We do not have to inquire whether the rates fixed are reasonable or unreasonable. It is the power through combination arbitrarily to fix rates which is prohibited.

The way in which the power conferred by the eighth article was used by The Managers to strengthen The Association and maintain the rates by diverting competitive traffic from one line to another, is shown in Senate Document No. 133, Fifty-fifth Congress, second session, containing testimony taken by the Interstate Commerce Commission in an investigation of The Joint Traffic Association, extracts from which are printed in Appendix B.

II.

I dare say counsel for the trunk lines will reargue, or attempt to reargue, the questions settled by this court in the Trans-Missouri Case. That case was elaborately argued and carefully considered. A petition for a rehearing was presented and denied. The decision has been accepted and acted upon by the departments of the Government, and by the courts, both State and Federal, as

definitively settling the meaning and scope of the anti-trust law when applied to traffic associations among competing interstate railway systems. [See Appendix C.] The decision was not only a just, but an eminently salutary one. I shall not concede that the principles it laid down remain questionable. I shall not admit that it is necessary for me, by argument, to fortify the position taken by this court in that case. The anti-trust law, as there construed is the law of the land.

The wisdom of Congress in prohibiting *all* agreements in restraint of trade among interstate railway systems is even more manifest now than when the Trans-Missouri Case was decided. At the time of the argument of the Trans-Missouri Case, it was still to some extent a mooted question whether the Interstate Commerce Commission was empowered to determine what are fair and reasonable rates, and to enforce such rates. This question is no longer open.

In the case of *Interstate Commerce Commission* v. *Cincinnati, New Orleans and Texas Pacific Railroad Company* (167 U. S., 479), this court, speaking by Mr. Justice Brewer, distinctly held there is no power in the commission to prescribe rates (bottom p. 511):

> Our conclusion, then, is that Congress has not conferred upon the commission the legislative power of prescribing rates, either maximum, or minimum, or absolute. As it did not give the express power to the commission, it did not intend to secure the same result indirectly by empowering that tribunal to determine what in reference to the past was reasonable and just, whether as maximum, minimum, or absolute, and then enable it to obtain from the

> courts a peremptory order that in the future railroad companies should follow the rates thus determined to have been in the past reasonable and just.

In the subsequent case of *Interstate Commerce Commission* v. *Alabama Midland Railway* (168 U. S., 144) the court adhered to the conclusion that Congress has not given the commission the power to prescribe rates, and held that, under section 4 of the interstate commerce act, competition between rival routes is an element to be considered in determining whether a railroad company might charge more for a long than for a short haul, the court, by Mr. Justice Shiras, saying (p. 164):

> That competition is one of the most obvious and effective circumstances that make the conditions, under which a long and short haul is performed, substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the act to regulate commerce, has been held by many of the circuit courts.

On page 173, after quoting an expression of the circuit court of appeals to the effect that carriers are better qualified to adjust rates than any court or public commission, to which counsel for the Interstate Commerce Commission had taken exception, this court said:

> We understand the statement made in the connection in which it occurs to mean only that, when once a substantial dissimilarity of circumstances and conditions has been made to appear the carriers are, from the nature of the question, better fitted to adjust their rates to suit such dissimilarity of circumstances and conditions than courts or commissions; and when we consider the difficulty, the practical impossibility,

of a court or commission taking into view the various and continually changing facts that bear upon the question and intelligently regulating rates and charges accordingly, the observation objected to is manifestly just.

The effect of these decisions is thus expressed by Mr. Justice Harlan in his dissenting opinion (p. 176):

I dissent from the opinion and judgment in this case. Taken in connection with other decisions defining the powers of the Interstate Commerce Commission, the present decision, it seems to me, goes far to make that commission a useless body for all practical purposes and to defeat many of the important objects designed to be accomplished by the various enactments of Congress relating to interstate commerce. The commission was established to protect the public against the improper practices of transportation companies engaged in commerce among the several States. It has been left, it is true, with power to make reports and to issue protests. But it has been shorn by judicial interpretation of authority to do anything of an effective character. It is denied many of the powers which, in my judgment, were intended to be conferred upon it. Besides, the acts of Congress are now so construed as to place communities on the lines of interstate commerce at the mercy of the competing railroad companies engaged in such commerce.

The judgment in this case, if I do not misapprehend its scope and effect, proceeds upon the ground that railroad companies, when competitors for interstate business at certain points, may, in order to secure traffic for and at those points, establish rates that will enable them to accomplish that result, although such rates may discriminate against intermediate points. Under such an interpretation of

> the statutes in question they may well be regarded as recognizing the authority of competing railroad companies engaged in interstate commerce—when their interests will be subserved thereby—to build up favored centers of population at the expense of the business of the country at large. I can not believe that Congress intended any such result, nor do I think its enactments, properly interpreted, would lead to such a result.

In view of these decisions, the public must look to competition for reasonable rates, not to the commission.

III.

It will probably be urged that any illegality in the agreement is cured by section 3 of Article VII (Rec., p. 29), which reads:

> SEC. 3. The powers conferred upon The Managers shall be so construed and exercised as not to permit violation of the interstate-commerce act, or any other law applicable to the premises, or any provision of the charters or the laws applicable to any of the companies parties hereto; and The Managers shall cooperate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares, charges, and rules established hereunder.

An injunction to construe and exercise powers conferred so as to permit no violation of law, is an admission that the powers may be so construed and exercised as to violate law. If the anti-trust law prohibited only those contracts in unreasonable restraint of trade or commerce there might be saving force in this section. But the anti-trust law prohibits *all* contracts in restraint of trade or

commerce. Whether the rates be reasonable or unreasonable, an agreement providing for their establishment and maintenance by an association of interstate railways, is prohibited. The Managers can exercise none of the essential powers conferred by the agreement without violating the law. In the matter of the essential powers, it is not a question of method or degree; the powers can not be exercised, because they are in themselves illegal. The Association itself is illegal. It is formed for the purpose of controlling certain competitive traffic. The central authority, The Managers, is given the power to establish and maintain rates on that traffic. Take away from The Association the power to establish and maintain rates, and it immediately falls to pieces. It ceases to have a *raison d' être*.

The Managers are directed to cooperate with the Interstate Commerce Commission "to secure stability and uniformity" in the rates, etc., "established hereunder." But no rates can be "established hereunder" without violating the anti-trust law. It will be observed that The Managers are not instructed to cooperate in securing *reasonable* rates. The latter part of this section is inserted to support not the real but the ostensible purpose of The Association, namely, of aiding the Interstate Commerce Commission to enforce the law. Assuming the commission powerless to enforce the law, the railroads ignored both the commission and the law, and proceeded to form an association outside of the law, and in violation of the law, to aid in enforcing the law. The railroads shatter the law, and then combine to support the fragments.

IV.

It was contended below that the bill was multifarious. There is but one cause of action in the bill, namely, the agreement. Upon that the bill is based. It seeks to enjoin the execution of an illegal contract. The averments of intent in the bill are unnecessary and immaterial. At the most they are conclusions of law. The court will examine the agreement and determine the question of law with respect to its meaning and effect; will determine whether the agreement restrains trade or commerce in any way so as to violate the law. If the agreement is prohibited by the anti-trust law, the court will enjoin its execution; and the court will do this irrespective of whether the agreement does or does not also violate the interstate-commerce act, or those general principles of law which prevent any interference with interstate commerce.

It is not necessary for the Government to insist that the agreement violates more than one law. It is clearly illegal as a contract in restraint of trade or commerce under the anti-trust law. The fact that it also violates some other law, if it does, assuredly will not cure its illegality under this law, or prevent the court from enjoining its execution. A thing which is doubly bad does not, therefore, become good. The rule of double negatives does not apply. Nor is the Government deprived of the power to restrain the execution of a contract in restraint of trade or commerce under the anti-trust law because the contract contains a provision under which individuals have committed, or may com-

mit, offenses punishable under the interstate-commerce act. If a man threatens my life I am not to be deprived of the right to put him under bond to keep the peace because he has also stolen my property.

V.

The authority of the Government to maintain this suit is sustained in *United States* v. *Freight Association* (166 U. S., 290, 343), citing *in re Debs* (158 U. S., 564); *Cincinnati, New Orleans, etc., R. R.* v. *Interstate Commerce Commission* (162 U. S., 184); *Texas and Pacific R. R.* v. *Interstate Commerce Commission* (162 U. S., 197).

VI.

For the convenience and information of the court, I have printed with this brief the following:

Appendix A.—Joint Traffic and Trans-Missouri agreements.

Appendix B.—Extracts from Senate Document 133, Fifty-fifth Congress, second session, showing operation of Joint Traffic agreement.

Appendix C.—Cases under anti-trust laws decided subsequent to the Trans-Missouri decision.

It is submitted that the judgments of the lower courts should be reversed.

JOHN K. RICHARDS,
Solicitor-General.

FEBRUARY 18, 1898.

APPENDIX A.

Joint Traffic Association.

PREAMBLE.

Purposes of this agreement.

To aid in fulfilling the purposes of the Interstate Commerce Act, to cooperate with each other and adjacent transportation associations, *to establish and maintain reasonable and just rates, fares, rules, and regulations on State and interstate traffic*, to prevent unjust discrimination, and to secure the reduction and concentration of agencies and the introduction of economies in the conduct of the freight and passenger service, the Allegheny Valley Railway Company, Baltimore and Ohio Railroad Company, Baltimore and Ohio Southwestern Railway Company, Central Railroad Company of New Jersey, Chesapeake and Ohio Railway Company, Chicago and Erie Railroad Company, Chicago and Grand Trunk Railway Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Delaware, Lackawanna and Western Railroad Company, Detroit, Grand Haven and Milwaukee Railway Company, Erie Railroad Company, Grand Rapids and Indiana Railroad Company,

Transmissouri Freight Association.

Memorandum of agreement made and entered into this 15th day of March, 1889, by and between the following railroad companies, viz: Atchison, Topeka and Santa Fe Railroad, Chicago, Rock Island and Pacific Railway, Chicago, St. Paul, Minneapolis and Omaha Railway, Burlington and Missouri River Railroad in Nebraska, Denver and Rio Grande Railroad, Denver and Rio Grande Western Railway, Fremont, Elkhorn and Missouri Valley Railroad, Kansas City, Fort Scott and Memphis Railroad, Kansas City, St. Joseph and Council Bluffs Railroad, Missouri Pacific Railway, Sioux City and Pacific Railroad, St. Joseph and Grand Island Railroad, St. Louis and San Francisco Railway, Union Pacific Railway, Utah Central Railway, and such other companies as may hereafter become parties hereto, witnesseth, for the purpose of mutual protection, *by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic, both through and local*, the subscribers do hereby form an association, to be known as the Transmissouri Freight Association,

Grand Trunk Railway Company of Canada, Lake Shore and Michigan Southern Railway Company, Lehigh Valley Railroad Company, Michigan Central Railroad Company, New York Central and Hudson River Railroad Company, New York, Chicago and St. Louis Railroad Company, New York, Ontario and Western Railway Company, Northern Central Railway Company, Pennsylvania Company, Pennsylvania Railroad Company, Philadelphia and Reading Railroad Company, Philadelphia, Wilmington and Baltimore Railroad Company, Pittsburgh and Lake Erie Railroad Company, Pittsburgh and Western Railway Company, Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, Terre Haute and Indianapolis Railroad Company (Vandalia Line), Toledo, Peoria and Western Railway Company, Wabash Railroad Company, West Shore Railroad Company, do hereby constitute the Joint Traffic Association (hereinafter called The Association), and make this agreement for the purpose of carrying out the objects above named. Other companies may become members of The Association as provided in Article III.

ARTICLE I.

Boards of Administration.

SECTION 1. The affairs of The Association shall be administered by three boards, with duties as hereinafter specified:

(*a*) A Board of Control.

(*b*) A Board of Managers hereinafter called The Managers.

and agree to be governed by the following provisions:

ARTICLE I.

1. The traffic to be included in the Transmissouri Freight Association shall be as follows: *All competitive traffic between points* in the following-described territory: Commencing at the Gulf of Mexico on the ninety-fifth meridian, thence north to the Red River; thence via that river to the eastern boundary of the Indian Territory; thence north by said boundary line and the eastern line of the State of Kansas to the Missouri River at Kansas City; thence via said Missouri River to the point of intersection of that river with the eastern boundary of Montana; thence via the said eastern boundary line to the international line—the foregoing to be known as "The Missouri River line;" thence via said international line to the Pacific Coast; thence via the Pacific Coast to the international line between the United States and Mexico; thence via said international line to the Gulf of Mexico; and thence via said Gulf to the point of beginning, including business between points on the boundary line as described.

2. All freight traffic originating within the territory as defined in the first section when destined to points east of the aforesaid Missouri River line.

[Exceptions omitted.]

ARTICLE II.

SECTION 1. The association shall, by unanimous vote, *elect a chairman of the* organization.

(c) A Board of Arbitration hereinafter called The Arbitrators.

SEC. 2. Wherever the term traffic is used herein it means both freight and passenger traffic.

ARTICLE II.

Traffic subject to The Association.

SECTION 1. The Association shall have jurisdiction *over all competitive traffic* (subject to the exceptions noted in section 2 of this article) which passes to, from, or through the western termini of the trunk lines, viz, Toronto, Canada; Suspension Bridge, Niagara Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction, Dunkirk, and Salamanca, N. Y.; Erie, Pittsburg, and Allegheny, Pa.; Bellaire, Ohio; Wheeling, Parkersburg, Charleston, and Kenova, W. Va., and Ashland, Ky.; and such other points as may hereafter be designated by The Managers as such termini; also all traffic which may pass through other junctions of the companies parties hereto, which is included when passing through any of the termini or junctions above or hereafter specified, and such other traffic as may by common consent of the parties be hereafter included herein.

SEC. 2. The following shall not be included:

(a) Coal, coke, iron ore, mill cinder, limestone, and petroleum, crude or refined.

(b) Traffic destined to or coming from Florida, Georgia, North and South Carolina, Virginia. The chairman may be removed by a two-thirds vote of the members.

SEC. 2. There shall be regular meetings of The Association at Kansas City, unless notice shall be given by the chairman that the business to be transacted does not warrant calling the members together, which notice shall be given not less than four days before the day set for the meeting. When a meeting—regular or special—is convened, it shall be incumbent upon each party hereto to be represented by some officer authorized to act definitely upon any and all questions to be considered. *Each road shall designate to the chairman one person who shall be held personally responsible for votes on that road.* Such person shall be present at all regular meetings when possible, and shall represent his road, unless a superior officer is present. If unable to attend he shall send a substitute with written authority to act upon all questions which may arise, and the vote of such substitute shall be binding upon the company he represents.

SEC. 3. *A committee shall be appointed to establish rates, rules, and regulations on the traffic subject to this association, and to consider changes therein, and make rules for meeting the competition of outside lines.* Their conclusions, when unanimous, shall be made effective when they so order, but if they differ, the question at issue shall be referred to the managers of the lines parties hereto; and if they disagree, it shall be arbitrated in the manner provided in Article VII.

and West Virginia south of the south line of the Chesapeake and Ohio Railway.

ARTICLE III.

The Board of Control.

SEC. 1. *The presidents of the companies* forming The Association, and of such other companies as may become parties hereto, *shall constitute the Board of Control*, which shall meet on the written request of any three of its members.

SEC. 2. In case of the absence of any member of the Board of Control from a meeting the next ranking officer in such company having jurisdiction over traffic will have authority to act in his place and stead.

SEC. 3. Each member of the Board of Control shall be entitled to one vote, except that no system as designated in article 4 shall have more than three votes in the aggregate. It shall require three-fourths of the entire number of authorized votes to adopt any proposition coming before the Board of Control.

SEC. 4. The Board of Control shall fix the salaries of any Commissioners appointed by the managers. The salaries of other officers and employees of The Association shall be subject to its review and approval. The Board of Control shall select the arbitrators and fix their compensation and term of service.

SEC. 5. The Board of Control shall appoint an auditing committee, who shall examine and report to it upon the accounts of The Association.

SEC. 6. The Board of Control shall prescribe the conditions

SEC. 4. *At least five days' written notice* prior to each monthly meeting shall be given the chairman *of any proposed reduction in rates* or change in any rule or regulation governing freight traffic.

SEC. 5. At each monthly meeting *The Association shall consider and vote upon all changes proposed*, of which due notice has been given, and all parties shall be bound by the decision of the association so expressed, unless then and there the parties shall give The Association definite written notice that in ten days thereafter they shall make such modification, notwithstanding the vote of The Association: *Provided*, That if the member giving notice of the change shall fail to be represented at the meeting no action shall be taken on its notice, and the same shall be considered withdrawn. Should any member insist upon a reduction of rate against the views of the majority, or if the majority favor the same, and if, in the judgment of said majority, the rate so made affects seriously the rates upon other traffic, then The Association may, by a majority vote, upon such other traffic put into effect corresponding rates, to take effect upon the same day. By unanimous consent, any rate, rule, or regulation relating to freight traffic may be modified at any meeting of The Association without previous notice.

SEC. 6. Notwithstanding anything in this article contained, *each member may, at its peril, make at any time, without previous notice, such rate, rule, or regulation as may be necessary to meet the competition of lines not*

and rules under which additional railway systems or companies shall become parties hereto and be represented upon the Board of Managers.

SEC. 7. *Only the Board of Control shall consider appeals from the action of the managers on all questions as to rates or fares; except differentials.*

SEC. 8. *Pending decisions by the Board of Control, the decisions and orders of the managers shall prevail.*

ARTICLE IV.

The Board of Managers.

SECTION 1. The Board of Managers shall consist of not less than nine members, of which each of the following nine systems shall designate one:

Baltimore and Ohio system, now comprising the Baltimore and Ohio Railroad Line from Philadelphia to Parkersburg and from Philadelphia to Chicago via Wheeling and via Pittsburg and Connellsville; Baltimore and Ohio Southwestern; Cleveland Terminal and Valley, and the Pittsburg and Western Railroad companies, and all their leased, controlled, or operated lines.

Chesapeake and Ohio system, now comprising the Chesapeake and Ohio; Cleveland, Cincinnati, Chicago and St. Louis, and lines composing that system, and the Peoria and Eastern Railroad companies, and all their leased, controlled, or operated lines.

Erie system, now comprising the Erie Railroad Company; the Chicago and Erie Railroad Company, and all their leased, controlled, or operated lines.

members of The Association, giving at the same time notice to the chairman of its action in the premises. If the chairman, upon investigation, shall decide that such rate is not necessary to meet competition of lines not members of The Association, and shall so notify the road making the rate, it shall immediately withdraw such rate. At the next meeting of the association held after the making of such rate it shall be reported to the association, and if The Association shall decide by a two-thirds vote that such rate was not made in good faith to meet such competition the member offending shall be subject to the penalty provided in section 8 of this article. If The Association shall decide by a two-thirds vote that such rate was made in good faith to meet such competition, it shall be considered as authority for the rate so made.

SEC. 7. All agreements with connecting lines for a division of through rates relating to traffic covered by this agreement shall be made by authority of The Association: *Provided, however,* That when one road has a proprietary interest in another, the division of such rates shall be what they may elect, and shall not be the property of The Association: *Provided further,* That as regards traffic contracts at this date actually existing between lines not having common proprietary interests the same shall be reported, so far as divisions are concerned, to The Association, to the end that divisions with the competing lines may, if thought advisable by them, be made on equally favorable terms.

Grand Trunk system, now comprising the Grand Trunk Railway Company of Canada and its affiliations west of the St. Clair River, viz, the Chicago and Grand Trunk; Cincinnati, Saginaw and Mackinaw; Detroit, Grand Haven and Milwaukee; Michigan Air Line, and the Toledo, Saginaw and Muskegon railway companies, and all their leased, controlled, or operated lines.

Lackawanna system, now comprising the Delaware, Lackawanna and Western Railroad Company and its leased lines; and the Syracuse, Binghamton and New York Railroad Company, and all their leased, controlled, or operated lines.

Lehigh Valley system, now comprising the Lehigh Valley Railroad Company and all its leased, controlled, or operated lines.

Pennsylvania system, now comprising the Allegheny Valley; Cumberland Valley; Cincinnati and Muskingum Valley; Grand Rapids and Indiana; Northern Central; Pennsylvania; Pennsylvania Company; Philadelphia, Wilmington and Baltimore; Pittsburgh, Cincinnati, Chicago and St. Louis, and the Terre Haute and Indianapolis (Vandalia Line) railroad companies, and all their leased, controlled, or operated lines.

Vanderbilt system, now comprising the Beech Creek; Canada Southern and its leased lines; Dunkirk, Allegheny Valley and Pittsburg; Lake Shore and Michigan Southern; Michigan Central and its leased lines; New York Central and Hudson River; New York, Chicago and St. Louis; Pittsburgh and Lake

SEC. 8. [As amended.] It shall be the duty of the chairman to investigate all apparent violations of the agreement and to report his finding to the managers, who shall determine, by a majority vote (a member against whom complaint is made to have no vote), what, if any, penalty shall be assessed, *the amount of each fine not to exceed $100, to be paid to The Association.* If any line party hereto agrees with a shipper or anyone else to secure a reduction or change in rates or change in the rules and regulations, and it is shown upon investigation by the chairman that such an arrangement was effected and traffic thereby secured, such action shall be reported to the managers, who shall determine, as above provided, what, if any, penalty shall be assessed.

Resolved, That the chairman has authority to examine all books, papers, and contracts relating to traffic covered by this agreement for the purpose of ascertaining if violations of the same exist; that the chairman may conduct such examination in any manner he may elect.

SEC. 9. When a penalty shall be declared against any member of this Association the chairman shall notify the manager of such company that such fine has been assessed, and that within ten days thereafter he will draw for the amount of the fine, and the draft, when presented, shall be honored by the company thus assessed.

SEC. 10. All fines collected to be used to defray the expenses of The Association, the offending party not to be benefited by the amounts it may pay as fines.

Erie; Rome, Watertown and Ogdensburg; Walkill Valley, and the West Shore railroad companies, and all their leased, controlled, or operated lines.

Wabash system, now comprising the Wabash Railroad Company and all its leased, controlled, or operated lines east of the Mississippi River.

SEC. 2. Additional managers representing other systems or companies which are now or may hereafter become parties to this agreement, may be designated as such systems or companies under the authority and rules of the Board of Control.

SEC. 3. Each manager shall hold office during the continuance of this agreement, subject to the pleasure of, and shall be compensated by, the system appointing him.

ARTICLE V.

Relating to the duties and powers of the managers.

SECTION 1. The managers shall have their principal office in New York City and shall continue in session subject to their rules. They shall elect a chairman annually.

SEC. 2. The managers shall adopt their rules and perfect their organization. It shall, however, require the affirmative votes of three-fourths of their entire number to adopt any proposition coming before them.

SEC. 3. In considering questions which exceptionally affect the interests of any company party hereto unrepresented upon the Board of Managers, such company shall be advised thereof and be afforded an opportunity

SEC. 11. Any member not present or fully represented at roll call of general or special meetings of the Freight Association, of which due and proper notice has been given, shall be fined one dollar, to be assessed against his company, unless he shall have previously filed with the chairman notice of inability to be present or represented.

ARTICLE III.

The duties and powers of the chairman shall be as follows:

SECTION 1. He shall preside at all meetings of The Association, and make and keep a record thereof, and promulgate such of said proceedings as may be necessary to inform the parties hereto of the action taken by The Association.

SEC. 2. He shall at all times keep and publish for the use of the members a full record of the rates, rules, and regulations prevailing on all lines parties hereto on business covered by this agreement, and each of the members hereto agrees to furnish such number of copies of rates, rules, and regulations issued by it as the chairman may require.

SEC. 3. *He shall construe this agreement and all resolutions adopted thereunder*, his construction to be binding until changed by a majority vote of The Association.

SEC. 4. He shall publish in convenient form all rates, rules, and regulations which are general in their character and apply throughout the territory of The Association, and shall also publish, in the manner above, such

under the rules of the managers for presenting to them its views before final action is taken.

SEC. 4. *The managers shall construe this agreement and all resolutions adopted thereunder.*

SEC. 5. *All applications for differentials and for changes in rates, fares, charges, and rules shall be made to the managers. Their action upon differentials and upon all questions except as to rates and fares shall be subject to appeal, but only to the arbitrators. Their action as to rates and fares (except differentials) shall be subject to appeal only to the Board of Control. Decisions and orders of the managers shall be complied with until such appeals are decided.*

ARTICLE VI.

Appointment of commissioners.

The managers may appoint not more than three commissioners, and shall define their powers and duties.

ARTICLE VII.

Rates, fares, charges, and rules.

SECTION 1. The duly published schedules of rates, fares, and charges, and the rules applicable thereto now in force and authorized by the companies parties hereto upon the traffic covered by this agreement (and filed with the Interstate Commerce Commission as to such of said traffic as is interstate), *are hereby reaffirmed* by the companies composing The Association, and the companies parties hereto shall within ten days after this agreement becomes effective file with the managers copies of all such schedules of rates, fares, and charges, and the rules applicable thereto.

rates, rules, or regulations applying on traffic common to two or more lines as may be agreed upon by the lines in interest.

SEC. 5. He shall be furnished with copies of all waybills for freight carried under this agreement, when called for, and shall furnish such statistics as may be necessary to give members general information as to the traffic moved, subject to the provisions of the Interstate Commerce Railway Association agreement as to lines members thereof.

SEC. 6. He shall render to each member of The Association monthly statements of the expenses of The Association, showing the proportions due from each, and shall make drafts upon the members for the different amounts thus shown to be due.

SEC. 7. He shall hear and determine all charges of violations of this agreement, and assess, collect, and dispose of fines for such violations, as provided for herein.

SEC. 8. The chairman shall be empowered to authorize lines in The Association to meet the rates of any other line or other lines in The Association when in his judgment such action is justified by the circumstances; this, however, not to act in any way as an indorsement of an unauthorized rate made by any member.

SEC. 9. Only the parties interested shall vote upon questions arising under the agreement, and in case of doubt the chairman shall decide as to whether any party is so interested or not, subject to appeal, as provided by section 3, Article III, of the agreement.

SEC. 2. *The managers shall* from time to time *recommend such changes* in said rates, fares, charges, and rules as may be reasonable and just and necessary for governing the traffic covered by this agreement and for protecting the interests of the parties hereto therein, and *the failure to observe such recommendations* by any party hereto as and when made shall be deemed *a violation of this agreement*. No company party hereto shall, through any of its officers or agents, deviate from or change the rates, fares, charges, or rules *herein reaffirmed or so recommended* by the managers, except by a resolution of its board. The action of such board shall not affect the rates, fares, charges, or rules disapproved except to the extent of its interest therein over its own road. A copy of the resolution of the board of any company party hereto authorizing any such change shall be immediately forwarded by the company making the same to the managers, and such change shall not become effective *until thirty days after the receipt* of such resolution by the managers. *The managers, upon receiving such notice, shall act promptly upon the same for the protection of the parties hereto.*

SEC. 3. The powers conferred upon the managers shall be so construed and exercised as not to permit violation of the Interstate Commerce Act or any other law applicable to the premises, or any provision of the charters or the laws applicable to any of the companies parties hereto, and the managers shall cooperate with the Interstate Com-

ARTICLE IV.

Any willful underbilling in weights, or billing of freight at wrong classification, shall be considered a violation of the agreement; and the rules and regulations of any weighing association or inspection bureau, as established by it or as enforced by its officers and agents, shall be considered binding under the provisions of this agreement, and any willful violation of them shall be subject to the penalties provided herein.

ARTICLE V.

The expenses of The Association shall be borne by the several parties in such proportion as may be fixed by the chairman. Any member not satisfied with the allotment so made may appeal to The Association, which shall, at its first regular meeting thereafter, determine the matter, which may be done by a two-thirds vote of the members.

ARTICLE VI.

There shall be an executive committee of three members, to be elected by unanimous vote. The committee shall approve the appointment and salaries of necessary employees, except that of the chairman, and authorize all disbursements. All action of this committee shall be unanimous.

ARTICLE VII.

In case the managers of the lines parties hereto fail to agree upon any question arising under this agreement that shall be brought before The Association,

merce Commission to secure stability and uniformity in the rates, fares, charges, and rules established hereunder.

ARTICLE VIII.

Propositions of competitive traffic.

The managers are charged with the duty of securing to each company party hereto equitable proportions of the competitive traffic covered by this agreement, so far as can be legally done.

ARTICLE IX.

Relations to nonconcurring companies and revisions of rates and fares.

SECTION 1. The manager shall decide and enforce the course which shall be pursued with connecting companies not parties to this agreement, which fail or decline to observe the rates, fares, charges, and rules established under this agreement. The interests of companies parties hereto injuriously affected by such action of the managers shall, in such instances, be accorded reasonable protection in so far as the managers can legally do so.

SEC. 2. When in their judgment necessary to the purposes of this agreement, the managers may determine the divisions of rates and fares between connecting companies parties hereto and between them and connections not parties hereto, keeping in view uniformity and the equities involved.

it shall be referred to an arbitration board, which shall consist of three members of the executive board of the Interstate Commerce Railway Association: *Provided, however*, that in case of arbitration in which the members of this Association only are interested they may, by unanimous vote, substitute a special board.

ARTICLE VIII.

This agreement shall take effect April 1, 1889, subject *thereafter to thirty days' notice of a desire on the part of any line to withdraw from* or amend the same.

ARTICLE X.

Limitation of powers of freight lines.

It is recognized and agreed that economy in the operation of through cooperative and commission freight lines and the limitation or termination of many of their existing powers and functions are absolutely required, and the companies parties hereto will actively cooperate with the managers and so manage such lines as to accomplish such results.

ARTICLE XI.

Managers may organize joint agencies.

The managers shall have authority to organize such joint freight and passenger agencies as they may deem desirable, provided that if such joint agencies are established they shall be so arranged as will give proper representation to each company party hereto.

ARTICLE XII.

Managers to approve contracting agencies.

No soliciting or contracting passenger or freight agency shall be maintained, directly or indirectly, by any of the companies parties hereto, or by any freight line in connection with the traffic covered by this agreement, except with the approval of the managers; and no person who is decided by the managers to be objectionable shall be employed or continued in such agency.

ARTICLE XIII.

Managers to define duties of contracting agents.

SECTION 1. The managers shall define the authority and duties of all persons acting as contracting and soliciting freight and passenger agents in relation to the traffic covered hereby, and, with due regard to the relative interests involved, they may determine the number of such persons to be employed. The parties hereto shall observe and enforce the orders of the managers from time to time issued in that behalf.

SEC. 2. Such contracting and soliciting agents as the managers appoint shall be carried upon the pay rolls of The Association.

SEC. 3. The Grand Trunk Company may appoint soliciting agents, to be located at such points in Canada as may be necessary to meet the competition of Canadian lines not parties hereto; but such persons shall, in all respects, be subject to the rules of the managers.

ARTICLE XIV.

Complaints and investigations thereof.

When in the judgment of the managers their information or any complaint so warrants, the officials and employees of the companies parties hereto may be examined, and in such investigation any or all officials or employees may be notified to attend, and any or all matters affecting directly or indirectly the traffic herein covered may be considered.

ARTICLE XV.

Reports and data to be furnished.

The companies parties hereto agree to furnish to the managers all reports, papers, and information relating to the traffic covered hereby which may be requested by them.

ARTICLE XVI.

Forfeitures for violations of agreement.

For any action by any party hereto which *in the judgment of the managers* constitutes a violation of this agreement the offending company shall forfeit to The Association a sum to be determined by the managers, *not exceeding $5,000*, but where the gross receipts of the transaction in which this agreement is violated shall exceed $5,000 the offending party shall, at the discretion of the managers, forfeit a sum not exceeding such gross receipts. Such forfeitures shall be applied to the payment of the expenses of The Association, except that the offending company shall not participate in such application of its own forfeiture.

ARTICLE XVII.

Deposits, expense fund, and provision for forfeitures.

SECTION 1. Upon the call of the managers after this agreement becomes effective each company party hereto shall deposit with them the sum of $5,000, and in addition thereto, upon their like call, such further sums monthly, based upon the gross earnings of each company

party hereto from the traffic covered hereby, as the managers may decide to be necessary to defray the expenses of The Association, including the salaries of the commissioners and arbitrators, and to provide for such forfeitures as may be adjudged.

SEC. 2. Any forfeiture made by any company party hereto, under the rules, shall be taken from the sums contributed by such company and charged in whole to its account. If this deposit at the time, exclusive of its said original contribution of $5,000, shall be insufficient, it shall pay to the managers such deficiency within fifteen days after the forfeiture is finally adjudged.

SEC. 3. The balance of said deposits remaining at the expiration of this agreement shall be divided between the companies then parties hereto in the ratio in which they have contributed, less the amounts forfeited.

ARTICLE XVIII.

Retirement from the agreement.

Any party retiring from this agreement before the final completion of the time herein fixed, except by unanimous consent of the parties hereto, shall not be entitled to any refund from the residue of deposits remaining at the close of this agreement, but if any company fails to observe and be governed by this agreement, which fact shall be determined by the arbitrators, and then fails to pay its forfeitures within fifteen days after such decision of the arbitrators, then any other company may withdraw from this agreement upon

giving thirty days' written notice to the managers, and such company so withdrawing shall be entitled to the residue of the funds it has contributed.

ARTICLE XIX.

Board of Arbitration.

SECTION 1. There shall be a permanent Board of Arbitration, consisting of three disinterested persons, to which appeals shall be made as to all questions, including differentials, arising under this agreement, *except the determination of rates and fares.*

SEC. 2. All differences between the parties hereto as to any lawful measure necessary to carry out the objects of The Association, except as to rates and fares, shall be submitted to and be finally decided by the arbitrators.

SEC. 3. Pending decisions of the arbitrators, the decisions and orders of the Board of Control and managers shall prevail.

SEC. 4. Hearings shall be had upon all questions arbitrated, under the rules established by the arbitrators and approved by the Board of Control, and the decision of the arbitrators or of any two of them shall be final.

ARTICLE XX.

Amendments.

Amendments to this agreement shall only be made by the unanimous vote of the parties hereto.

ARTICLE XXI.

When agreement becomes effective, and its duration.

SECTION 1. This agreement shall not be effective until it shall have been approved by the boards of directors of the several companies parties hereto. Certified copies of resolutions giving such approval shall be filed with the managers.

SEC. 2. This agreement shall *take effect January 1, 1896, and shall continue in existence for five years thereafter.* After said period any company may retire therefrom *upon giving ninety days' written notice* of its desire to do so.

The Philadelphia and Reading Railroad Company being legally incapacitated from signing this contract at present, but having so far as it can do so indicated through its president and receivers and proposed reorganization committee its desire to act in harmony therewith and observe its terms, it is understood that the parties hereto will waive the signature of that company until it is reorganized, and be bound by this agreement only so long as that company observes its conditions, which fact shall be determined by the arbitrators provided herein.

In witness whereof the corporations parties hereto have caused the foregoing agreement to be signed by their respective presidents and the seal of their respective corporations to be attached hereto.

APPENDIX B.

EXTRACTS FROM SENATE DOCUMENT NO. 133, FIFTY-FIFTH CONGRESS, SECOND SESSION.

Contains a transcript of testimony taken at a public inquiry by the Interstate Commerce Commission into the management of the business of the common carriers, subject to the act to regulate commerce in transporting grain and grain products from Chicago to the Atlantic seaports in the first quarter of the year 1897. The railroad companies, parties to the joint traffic agreement, were parties to the inquiry, and were represented at the taking of the testimony.

The testimony establishes that to carry into effect the *joint traffic agreement*, the *Board of Arbitrators* provided for in article 19 of that agreement made a decision or award in which the competitive traffic contemplated in said agreement, east bound from Chicago, was reduced to an equivalent sixth-class tonnage basis and then divided by fixed percentages between the roads, parties to the joint traffic agreement.

The following (from page 23, Senate Document No. 133) is a copy of

THE POOLING AWARD.

Arbitrators' award in the division of east-bound traffic from Chicago and Chicago junctions which comes under contract of Joint Traffic Association.

After due consideration of the arguments presented and the statistics of traffic forwarded in the past, the

arbitrators' award is that the east-bound shipments of live stock and dressed meats from Chicago and Chicago junctions, included in this reference, reduced to an equivalent sixth-class tonnage basis, be apportioned between the lines in interest from and after September 1, 1896, as follows:

	Per cent.
Baltimore and Ohio Railroad	4.5
Cleveland, Cincinnati, Chicago and St. Louis Railway	1.1
Chicago and Erie Railroad	9.4
Chicago and Grand Trunk Railway	13.2
Lake Shore and Michigan Southern Railway	19.8
Michigan Central Railroad	16.1
New York, Chicago and St. Louis Railroad	11.3
Pittsburg, Cincinnati, Chicago and St. Louis Railway	10.7
Pittsburg, Fort Wayne and Chicago Railway	8.7
Wabash Railroad	5.2
Total	100

And that the east-bound dead freight tonnage from Chicago and Chicago junctions, covered by this reference, reduced to an equivalent sixth-class basis, be apportioned between the lines in interest from and after September 1, 1896, as follows:

	Per cent.
Baltimore and Ohio Railroad	8
Cleveland, Cincinnati, Chicago and St. Louis Railway	5.8
Chicago and Erie Railroad	11.2
Chicago and Grand Trunk Railway	11
Lake Shore and Michigan Southern Railway	14.2
Michigan Central	13.6
New York, Chicago and St. Louis Railroad	8.2
Pittsburg, Cincinnati, Chicago and St. Louis Railway	7
Pittsburg, Fort Wayne and Chicago Railway	14.2
Wabash Railroad	6.6
Total	100

October 30, 1896.

The testimony of JAMES L. CLARK, general Western freight agent of the Lake Shore and Michigan Southern, page 24 et seq., establishes in part how

THE POOL IN RESTRAINT OF COMPETITION WAS EFFECTED.

He testified (p. 7, Senate Doc. 133) that to carry into effect the award of the Joint Traffic Arbitrators, and (Doc., p. 34) under the direction of G. J. Grammar, of the Lake Shore and Michigan Southern Railway (see p. 24)—

"We diverted to the Nickel Plate (New York, Chicago and St. Louis Railway) from February 26 and up to April 1 (1897), and during that time diverted to the Nickel Plate Railroad 364 cars, amounting to 12,466,140 pounds of traffic."

L. BRIGGS, commercial agent at Chicago of the New York, Chicago and St. Louis Railway (The Nickel Plate), testified at page 39, et seq., Senate Document 133, that the receivers of the Baltimore and Ohio Railroad had, at Chicago, February 26 to May 18, 1897, turned over to the New York, Chicago and St. Louis Railway 365 carloads of traffic (Doc., p. 58), containing 15,000,000 pounds of traffic that had been received at Chicago by the Baltimore and Ohio road for transportation to points on the Baltimore and Ohio road, and was loaded in Baltimore and Ohio cars (Doc., p. 44).

This traffic was by the New York, Chicago and St. Louis Railway carried to Painesville, Ohio, and there turned back to the Pittsburg and Western Railway, a branch of the Baltimore and Ohio system.

The New York, Chicago and St. Louis Railway received for the haul to Painesville divisions varying from 35 to 46.5 per cent of the rate from Chicago to destination of the traffic (p. 58, Doc. 133).

A. P. BIGELOW, general Western freight agent for the Baltimore and Ohio road, testified that he was an agent for the receivers for that road (p. 73, Sen. Doc. 133) and delivered from the Baltimore and Ohio Railroad to the

New York, Chicago and St. Louis Railway some east-bound traffic. When asked how he came to deliver the traffic to that road, said (Doc., p. 74):

"Mr. BIGELOW. I will state my understanding of it. As I understand it, the trunk lines engaged in some strife for traffic tacitly agreed that there should be some kind of restraining influence or some material manifestation of sincerity and good faith toward one another, and agreed, if I may put it that way, that they would confine their tonnage to within certain limits. The Baltimore and Ohio simply exceeded its proportion, and in order to establish the fact that it was maintaining the rates and acting in good faith, and as material evidence of that, it turned some of its east-bound traffic over to the New York, Chicago and St. Louis road."

That this official was conscious that giving away this traffic to a competing line was practical proof that the joint traffic agreement was designed to be and was in fact a pooling agreement is shown by his evasive and reluctant testimony. (See pp. 74 to 79, Sen. Doc. 133.)

On pages 77 and 78 the witness was asked the following:

"Mr. DAY. Do you know of any instance where you gave away traffic that your road had obtained—gave it away to a competitor—since the road went into the possession of Federal receivers, other than the Nickel Plate case?

"Mr. BIGELOW. I do not recall any.

"Mr. DAY. Are you able to say there is a precedent for it?

"Mr. BIGELOW. With our company?

"Mr DAY. Yes, sir; representing the Baltimore and Ohio Company or the Baltimore and Ohio receivers?

"Mr. BIGELOW. I do not recall whether there was a precedent or not for the action."

He was also asked (Doc., p. 75):

"Mr. DAY. Did you receive any advice from Mr.

Wright (general traffic manager of the Baltimore and Ohio) directing you to turn over this traffic to another competing line?

"Mr. BIGELOW. I do not recall that I received any specific instructions from him.

"Mr. DAY. Did you receive any instructions verbally or in writing?

"Mr. BIGELOW. Not that I recall; I may have.

"Mr. DAY. Did you have any correspondence with him in reference to it?

"Mr. BIGELOW. Not that I recall.

"Mr. DAY. Did you advise him what you had done?

"Mr. BIGELOW. I do not think so.

"Mr. DAY. Did you advise anybody?

"Mr. BIGELOW. I do not think so. The statistics show what was done."

A short time after Mr. Bigelow had testified that he could recall no instance excepting the case of the Nickel Plate road where the Baltimore and Ohio road had given away a part of its traffic to another railroad, and after he had testified that he could recall no conversation or instructions from his general traffic manager, C. V. Wight. Another witness, Mr. James McCrea, *vice-president* of the Pennsylvania Company, testified, and as a part of his testimony produced the correspondence, copies of which appear on pages 96 to 101, Senate Document 133. This correspondence relates to traffic which the Baltimore and Ohio Railroad subsequently, under the direction of Mr. Bigelow, at Chicago, turned over to the Pennsylvania Company.

The first of these letters, which bears date of December 11, 1896 (p. 100, Senate Doc. 133), and one dated January 14, 1897 (p. 99, Senate Doc. 133), show that the witness Bigelow not only personally supervised the turning over several thousand tons of traffic to another line than the Nickel Plate, none of which he could recall when he was a witness, but in company with his superior,

Mr. Wight, personally called on the general freight agent of the Pennsylvania Railroad to arrange the details and division of expenses connected therewith. Messrs. Bigelow and Wight expressed some doubt of getting the permission of the court to divide their traffic.

The letter of January 14, 1897, shows that additional burdens were put on this traffic or unnecessary expenses were incurred for switching from the Baltimore and Ohio tracks to the Pennsylvania rails at Chicago, and from the Pennsylvania rails back to the Baltimore and Ohio rails at Allegheny, which would have been unnecessary had the traffic been carried through by the Baltimore and Ohio road as it was originally consigned and billed. The switching charged at Allegheny was necessary to get the traffic back to the Baltimore and Ohio rails, because the traffic was destined for points on the Baltimore and Ohio road east of Pittsburg.

[Senate Document 133, p. 100.]

PENNSYLVANIA COMPANY,
GENERAL WESTERN FREIGHT AGENT.
Chicago, Ill., December 11, 1896.

Mr. C. L. COLE,
General Freight Agent, Pittsburg, Pa.

DEAR SIR: Manager Freight Traffic Wight and General Western Freight Agent Bigelow, of the Baltimore and Ohio, have just been in this office and interviewed us in regard to their excess tonnage out of Chicago. They desire to know if, in the event that they diverted grain to our line at South Chicago, on account of our shortage, if we would resurrender the traffic to their system, the Pittsburg and Western, at Pittsburg.

The gentlemen named stated that while they did not know whether the courts would permit them to deliver traffic to us, they being in the hands of a receiver, still

they would like to know if we would redeliver the property to them at Pittsburg, as indicated, and also to pay a reasonable switching charge for delivering the property to us at South Chicago. If we assent to these conditions they will take the matter in hand to see whether they could get permission to divert grain traffic to us.

Heretofore, as you are aware, traffic has been received by Eastern lines from those in excess by those in deficit with the understanding that it was to be surrendered to the originating line again at the western termini, and it has also been customary to pay a reasonable switching charge at the point where the grain is diverted.

We do not know how genuine this proposition is, but it might be well to test their sincerity and agree to the conditions named for which there has been precedent heretofore.

Kindly advise us by wire early to-morrow morning, as Mr. Wight desires to leave the city some time during the day.

Yours, truly, WM. BORNER, *G. W. F. A.*

[Page 99, Senate Document 133.]

PENNSYLVANIA COMPANY,
GENERAL WESTERN FREIGHT AGENT,
Chicago, Ill., January 14, 1897.

Mr. WM. BORNER,
G. W. F. A., Pennsylvania Company, Chicago.

DEAR SIR: With further reference to our conversation yesterday concerning diversions from this company to your line, we will begin at once to turn over to your company what freight we can consistently, making deliveries to you at South Chicago. The cars will be accompanied by transfer freight bills, which will give you full shipping instructions, contents of cars, weight, etc. It is to be understood that you will bill this freight to

Allegheny and surrender it back to our company at that point. The divisions applicable upon the traffic, according to our figures, will be as follows:

	Miles.
Baltimore, Md.:	
Pennsylvania Company, South Chicago to Allegheny	456
Baltimore and Ohio, Allegheny to Baltimore	333
Total mileage	789
Percentage proportion, Pennsylvania Company	57.8
Percentage proportion, Baltimore and Ohio	42.2
Washington, D. C.:	
Pennsylvania Company, South Chicago to Allegheny	456
Baltimore and Ohio, Allegheny to Washington	307
Total mileage	763
Percentage proportion, Pennsylvania Company	59.8
Percentage proportion, Baltimore and Ohio	40.2
Philadelphia, Pa.:	
Pennsylvania Company, South Chicago to Allegheny	456
Baltimore and Ohio, Allegheny to Philadelphia	429
Total mileage	885
Percentage proportion, Pennsylvania Company	51.5
Percentage proportion, Baltimore and Ohio	48.5

In billing this freight you will deduct the following arbitraries before prorating: On dead freight for Baltimore, Philadelphia, and Washington, 1½ cents per 100 pounds. There is a junction railroad transfer charge between Allegheny and Glenwood of 82 per car. This, however, we will include in our statement to you of the terminals which must be borne by the property at Chicago. The Chicago terminals are of a varied character, which you fully understand, such as switching, trackage, transfer charges, etc. In order to simplify matters, we believe that these particular charges can be better adjusted in a statement independent of the original billing, and we will periodically, or at the time of the discontinuance of the diversions, render to your company a statement covering the Chicago terminal charges which are to be prorated, also the junction railroad transfer charge at Allegheny.

I would further request that in billing the diverted

freight from South Chicago you place prominently upon the waybills the term "Diverted freight from the Baltimore and Ohio road." We desire this notation made upon your billing in order that Chairman Tucker will be able to check same and give us due credit for all tonnage.

We trust that you will give all of the diverted freight very prompt movement.

Please acknowledge receipt by bearer, and state if the conditions contained herein meet with your approval.

Yours, truly,

A. P. BIGELOW, *G. W. F. A.*

[Page 98, Senate Document 133.]

[Personal.]

PENNSYLVANIA COMPANY,
GENERAL WESTERN FREIGHT AGENT,
Chicago, Ill., January 15, 1897.

Mr. C. L. COLE,
General Freight Agent, Pittsburg, Pa.

DEAR SIR: Regarding diversions from the Baltimore and Ohio, as indicated in letter from General Western Freight Agent A. P. Bigelow, which you saw here yesterday, copy of which we now inclose as per request, we have to advise further that this morning our agent from South Chicago, with the undersigned, met Messrs. Bigelow and Weyman, the latter the local agent of the Baltimore and Ohio, and had somewhat of a definite understanding in regard to the transaction of the business. Two cars of freight were delivered to us at South Chicago last night, and will go forward this evening; and in regard to which we will wire you, so that you can arrange, as suggested, for prompt movement through Allegheny to the Baltimore and Ohio.

The arrangements are as follows: All fixed expenses which the Baltimore and Ohio are subject to in gathering up this diverted traffic, such as stock-yard trackage, ele-

vator switching charges, etc., are to be prorated on per cents, as indicated in copy of letter inclosed. The fixed charges against us on diverted traffic are: First, switching charge of $2 for delivery via Junction Railroad, transfer between Allegheny and Glenwood; second, the actual cost of transferring grain from Western cars to Baltimore and Ohio cars, which will not exceed $1 per car; and third, the switching service of the Baltimore and Ohio, which has been agreed to by all concerned at $2 per car when freight originates at South Chicago on the Baltimore and Ohio, and $3 per car when such diverted freight originates on the tracks of the Baltimore and Ohio in this city or at the stock yards. The detail is to be carried out between the Baltimore and Ohio local agent and our own at South Chicago. So far as the switching arrangements at Chicago and South Chicago are concerned, it would seem as though we made as favorable an arrangement as possible, as our local agent was of the opinion, first, that a fair compensation would be about $3 per car on all traffic delivered us, and yet we succeeded in obtaining $2 on a portion of the traffic and $3 on the remainder.

Yours, truly,

WM. BORNER, *G. W. F. A.*

Mr. McCREA's testimony (p. 89, Sen. Doc.) and his letter dated November 13, 1897 (Sen. Doc., p. 96), shows the percentage of competitive traffic the Pennsylvania lines were entitled to under the arbitrators' award and in part how the traffic was divided:

PENNSYLVANIA LINES WEST OF PITTSBURG,
Pittsburg, Pa., November 13, 1897.

WILLIAM A. DAY, Esq.,
Counsel for the Interstate Commerce Commission,
Washington, D. C.

MY DEAR SIR: Absence from the office and the necessity for a very thorough search through our records have

prevented a more prompt response to the inquiries contained in your communication of October 29, asking for additional information in connection with my testimony before the Interstate Commerce Commission on July 20, 1897. I now beg to say:

First. That the total tonnage turned over to the Pennsylvania lines (Pittsburg, Fort Wayne and Chicago Railway) at Chicago and Chicago common points by the Baltimore and Ohio Railroad Company during the period between January 1 and April 15, 1897, was between 1,900 and 2,100 tons. If you want the details of this tonnage, showing dates, car numbers, etc., I shall be glad to furnish them, but it will take some time to obtain the information, as it will have to be worked up from our waybills, etc.

Second. Having reference to your request for copies of the correspondence, telegraphic or otherwise, that passed between the Pennsylvania Company or any of the officers or agents of the Pennsylvania system and the receivers or agents of the Baltimore and Ohio Railroad Company, relating to such traffic, at the time of my examination before the commission, I stated that I did not remember whether the arrangement had been a verbal or written one, but that I thought it was by letter or telegraph. In this I must have been mistaken, as I have been unable to find any correspondence on the subject, and, upon thinking the matter over, it seems to me, although I will not be positive, that it was a verbal arrangement between Receiver Murray and myself. The conversation, as I recollect it, was that Mr. Murray stated that they were considerably "over" in the volume of their Chicago business, and asked, if they turned some of it over to the Pennsylvania lines, whether we would redeliver same to the Baltimore and Ohio Railroad at Pittsburg, to which I replied, "certainly," and directed our then freight traffic manager to carry out the arrangement. I presume that Mr. Murray gave similar instruction to

his traffic officers, and that the correspondence (copy of which is inclosed herewith) resulted therefrom.

Third. Under the arbitrator's award of October 30, 1896, the Pennsylvania lines were entitled to carry 19.4 per cent of the east-bound live stock and 21.2 per cent of east-bound dead freight from Chicago and Chicago common points.

Very truly, yours,

JAMES McCREA,
Vice-President.

AGREEMENT OPERATES IN RESTRAINT OF TRADE AND COMMERCE.

The same Senate document (No. 133) shows that within two years after the *Joint Traffic Association agreement* became effective more than 1,200 freight circulars or rulings were promulgated by the *Board of Managers* (Doc., p. 102), and freight circulars Nos. 222 and 274, set forth in said Senate document (pp. 102–105), indicate the *authority exercised over rates under the agreement.*

Competition between carriers was restrained, and under *suspension of association rules* was permitted as to certain traffic described in association freight circulars Nos. 563 and 1369 (Sen. Doc. 133, pp. 105–107), but the competition allowed was restricted to that of carriers in the association with carriers not members of The Association.

The testimony of George R. Blanchard, commissioner of the Joint Traffic Association, in the case of *New York Produce Exchange* v. *Baltimore and Ohio Railroad Co. et al.*, and in which carriers members of that Association were principal defendants (Sen. Doc., p. 108), was given in New York before the Interstate Commerce Commission while this case of *United States* v. *Joint Traffic Association* was pending and about to be argued in that city before the circuit court of appeals. Though the witness was asked to describe the workings of The Association, he did

not mention or refer to the pooling of freight and division thereof under the previously made arbitration award. (Sen. Doc., p. 23.) *The fact of pooling under the agreement was suppressed.* This witness testified concerning the control by The Association and its officers. (Doc., pp. 108, 109, 110, 113, 114, 116, 117, 118, 125, 126, 127, 128, 129, 130, 131, 132.) In one portion of the testimony it appears stated that "the powers of The Managers, as stated in the contracts, are only recommendatory to the various companies." (Doc., p. 108.) The witness testified in another place to the effect that *a carrier member of The Association can not reduce its rate against the recommendation of The Managers, except on notice given by its Board of Directors.* (Doc., p. 117.)

A purpose of The Association is to maintain rates that have been established and to prevent changes not recommended by The Managers. (Doc., pp. 109, 117, 127, 129, 132, 133.)

"*Recommendations" of Association managers are invariably obeyed.* (Doc., p. 133.)

APPENDIX C.

CASES UNDER ANTITRUST LAWS SUBSEQUENT TO TRANS-MISSOURI DECISION.

[*National Harrow Co.* v. *Hench et al.*, 83 F. R., 36. Circuit court of appeals, third circuit. October 29, 1897.]

Numerous manufacturers of spring-tooth harrows throughout the United States organized into a corporation, and agreed to assign to said corporation all United States patents which they then owned or should thereafter acquire relating to float spring-tooth harrows, together with the good will of their business in such harrows, agreeing to be interested in such harrows only as agents of the corporation, and to manufacture same only as agents or licensees. Result that almost the entire output of these harrows in the United States was under the regulation and control of this organization—at least 90 per cent thereof.

Held, That the manifest purpose of the parties was to form a combination to prevent competition and enhance prices of these harrows; that such was the effect of their agreement.

"That such a contract should be unlawful seems clear. While it is true that all contracts in restraint of trade are not prohibited, and it is sometimes difficult to determine whether a particular one is, there is no room for doubt that such a contract as this, which provides for general and unlimited restraint, is unlawful."

The fact that several patentees are exposed to litigation does not justify the creation by them of monopolies to public disadvantage.

[*United States* v. *Hopkins et al.*, 82 F. R., 529. Circuit court, Kansas September 20, 1897.]

Defendants, about three hundred in number, are members of a voluntary unincorporated association. Substantially all the business relating to the handling of live stock at the Kansas City stock yards is carried on by defendants. Live stock is shipped from Nebraska, Colorado, Texas, and other States and Territories to defendants and sold by them to various packing houses in Kansas City, Mo., and Kansas City, Kans., and also shipped to other markets. Kansas City market is the second largest live stock market in the world, and the only available public market in an exceedingly large territory of the United States. If live stock is consigned to a person or partnership not member of said exchange, he is not permitted to dispose of same on Kansas City market, for the reason that defendants and all other commission merchants doing business at said yards are required by rules of said exchange not to deal in any manner with a person not a member of the exchange, such person being systematically blacklisted and boycotted. Free transmission of telegraphic information regarding the condition of the market is prevented.

Held, to be an illegal combination to restrict, monopolize, and control that class of trade.

Such combination is to be determined not alone from what appears upon the face of the preamble, rules, and by-laws of The Association, but from the entire situation and the practical workings and results of the defendants' methods of doing business.

"This act of Congress is aimed against all restrictions of interstate commerce, and we need not discuss the reasonableness of such instructions. It is evidently the purpose of the law to permit commerce between States to flow in its natural channels, unrestricted by any com-

binations, contracts, or conspiracies, or monopolies whatsoever."

Where live stock is shipped from other States and Territories to Kansas City and there unloaded and sold without regard to market, some shipped to other markets in other States, this is commerce between States. It does not cease to be the subject of interstate commerce when it reaches Kansas City, and is unloaded.

[*United States* v. *Addyston Pipe and Steel Co. et al.*, 78 F. R., 712. Circuit court, eastern district of Tennessee. February 5, 1897.]

Six companies combined together to monopolize the trade in cast-iron pipe in certain States and Territories of the United States, entering into a contract or association known as the Associated Pipe Works. The several companies agreed not to compete with each other, and, to make the arrangement effectual, agreed to charge a bonus upon all work done and pipe furnished, which bonus was to be added to the market price of the pipe sold.

There were *nine* other companies engaged in the manufacture and sale of cast-iron pipe in the territory sought to be monopolized, which was designated "pay territory." *Ten* other companies were similarly engaged outside of this territory, known as "free territory."

It is alleged that the combination had not been able to raise prices above a reasonable price. Restraining order was first allowed; case now heard upon application for a preliminary injunction.

Held, Federal authority has nothing to do with a monopoly or a contract in restraint of trade until it interferes directly and substantially with interstate commerce or commerce with foreign nations, and this must be directly and not incidentally. No such combination or intent shown. The Association's method of doing business has no direct relation to interstate commerce.

This case was reversed by the circuit court of appeals February 14, 1897, Judge Taft delivering the opinion. Justice Harlan, and Judges Taft and Lurton composed the court.

"DECISION OF THE COURT.

"The court of appeals held, first, that the contract of association, even if the prices fixed under it were reasonable, and its only purpose was to prevent ruinous competition, as claimed by defendants, was nevertheless void at common law because in restraint of trade and an attempted monopoly.

"Second. That the prices were not reasonable, and the purpose was an attempted monopoly.

"Third. That the trade restrained by the contract of association was the negotiation and sale of pipe to be delivered across State lines from the State of manufacture to the State of sale, and that this was, under all the decisions of the Supreme Court, interstate commerce.

"Fourth. As a conclusion from these premises that the contract of association was a restraint and burden on interstate commerce and a violation of the Federal anti-trust act, and should be enjoined."

[*Milwaukee Masons and Builders' Association* v. *Niezerowski*, 70 N. W. Rep., 166. Supreme court of Wisconsin. February 2, 1897.]

This corporation comprises sixty of the seventy or seventy-five mason contractors in Milwaukee. They had two sets of by-laws; one for general distribution, and the other private, which was carried into operation. The corporation had contracts with material men in the city by which members of the association could receive rebates of 33⅓ per cent upon all material furnished, thus enabling them to underbid nonmembers. All bids were first submitted to the association, who ascertained the lowest bidder, and then required him to add 6 per cent to

the amount of this before he should submit it to the person for whose work he was competing, and to pay said 6 per cent to the secretary of the association. The manifest purpose was by means of the combination to suppress fair and free competition.

One member of the association submitted a bid for the erection of a church directly to the congregation without consulting the association and without adding the 6 per cent. The association claimed that defendant should give his note for the usual percentage of 6 per cent, which he finally did. The action is upon this note.

Held, To be contrary to public policy, and therefore void.

"Agreements in restraint of trade are against public policy and void, unless founded upon a valuable consideration, and limited, as regards time, space, and the extent of the trade, to what is reasonable under the circumstances of the case."

The test whether the restraint is reasonable is laid down in *Horner* v. *Graves* (7 Bing., 735, 743), where it is said: "The question is whether the restraint is such only as to afford a fair protection to the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public. Whatever restraint is larger than the necessary protection of the party can be of no benefit to either. It can only be oppressive; and, if oppressive, it is, in the eye of the law, unreasonable."

[*National Harrow Company* v. *Bement & Sons*, 21 App. Div. (N. Y.), 290. Appellate division, supreme court of New York, fourth department. October term, 1897.]

Plaintiff is a corporation composed of about twenty firms and corporations who organized for the purpose of manufacturing and selling float spring-tooth harrows. Each firm assigned to said corporation, the National Harrow Company, its patents on harrows, and received

stock in exchange. Licenses were issued for these manufacturers to make the same kind of harrows as they had previously made, but the corporation fixed the price at which they should be sold, the right being reserved by the corporation to reduce such prices.

The appeal is from the judgment of the supreme court in favor of plaintiff.

Held, Contrary to public policy and void. Defendant not estopped by his contract from questioning its validity.

Contrary to chapter 384, New York laws of 1897, which is an act forbidding the creation of a monopoly or the unlawful restraint of trade, or for the prevention of competition in any necessary of life.

[*American Fire Insurance Company et al.* v. *State*, 22 So. Rep., 99. Supreme court of Mississippi, May 24, 1897.]

Combinations to fix fire-insurance rates are within the prohibition by Mississippi Code, 1892, section 4437, of any trust or combine to place the control of "business" or its products or earnings in the hands of trustees.

[*Cummings* v. *Union Blue Stone Company*, 15 App. Div. (N. Y.). Appellate division, supreme court of New York, second department, April Term, 1897.]

A contract between the Union Blue Stone Company and a large portion of the wholesale dealers in blue stone along the Hudson River for the purpose of controlling that trade in New York city is void as being in restraint of trade.

[*People* v. *American Tobacco Company* (Ill. C. C.), 2 Chi. L. J., Wkly., 249.]

A combination by 95 per cent of the manufacturers and sellers of paper cigarettes consumed in the United States, to enable them to unite their respective interests under one governing body to limit the production, main-

tain prices, and destroy competition, is a commercial trust within the Illinois act of June 20, 1893.

[*People* v. *Duke*, 44 N. Y. Sup., 336. Court of general sessions, New York County, January, 1897.]

Defendants were officers and agents of a corporation called the American Tobacco Company, and sought to monopolize the business of making and vending cigarettes throughout the United States, and to unlawfully raise the price of such cigarettes.

Held, Within the prohibition against restraint of trade upon the grounds of public policy. Such monopoly need not be on the necessaries of life. Character of the trade to be monopolized is of no concern so long as it be a lawful one.

[*The Lufkin Rule Company* v. *Xavier Fringeli et al.* Supreme court of Ohio. No. 4913. Error to the circuit court of Cuyahoga County.]

SYLLABUS.

MINSHALL, J.

1. All agreements in general restraint of trade are against public policy and void; but agreements having such partial effect only, made in connection with the purchase of a business and its good will, shown to be reasonably necessary to the enjoyment of the good will of the business purchased, and not oppressive, may be enforced.

2. Where one engaged in the same business as another purchases that of the latter with its good will, and takes from the latter a stipulation that he will not directly nor indirectly engage in the same business in the State nor in the United States for the period of twenty-five years, such agreement necessarily tends to create a monopoly; and whether necessary or not to the reasonable enjoyment of the good will so purchased, the interest of the

public in the nonenforcement of such an agreement outweighs the interest of the purchaser in its enforcement, and is void.

3. Such an agreement is not divisible, for the reason that if restrained to the limits of the State, still such restraint would be general in its nature, and obnoxious to all the objections that exist against a general restraint of trade.

Judgment affirmed.

Decided February 1, 1898.

55th Congress, 2d Session. } SENATE. { No. 133.

No. 344. 84.
Appt. to Sup. of City. Gen. for Appr.

JOINT TRAFFIC ASSOCIATION.

LETTER

Filed Feb 23, 1898.

FROM

THE INTERSTATE COMMERCE COMMISSION,

TRANSMITTING,

IN RESPONSE TO RESOLUTION OF THE SENATE OF FEBRUARY 7, 1898, SO MUCH OF THE TESTIMONY TAKEN BY THE COMMISSION IN THE PROCEEDINGS KNOWN AS THE NEW YORK PRODUCE EXCHANGE CASE AND THE GRAIN INVESTIGATION CASES OF 1897 AS RELATES TO THE JOINT TRAFFIC ASSOCIATION AGREEMENT AND ANY ACTION THEREUNDER IN THE POOLING TRAFFIC OR OTHERWISE.

FEBRUARY 11, 1898.—Referred to the Committee on Interstate Commerce and ordered to be printed.

INTERSTATE COMMERCE COMMISSION,
Washington, February 10, 1898.

The President of the Senate:

In compliance with the resolution of the Senate of February 7, 1898, "so much of the testimony taken by the commission in the proceedings known as the New York Produce Exchange case and the grain investigation cases of 1897 as relates to the Joint Traffic Association agreement and any action thereunder in the pooling of traffic or otherwise" is hereby transmitted.

Respectfully,

MARTIN A. KNAPP,
Chairman.

INVESTIGATION OF RATES ON GRAIN AND GRAIN PRODUCTS TO ATLANTIC SEAPORTS.

The attention of the commission having been called to alleged violations of the act to regulate commerce by common carriers subject to the act in transporting grain and grain products from Chicago and points in Illinois taking Chicago rates to the Atlantic seaports, between January 1 and March 15, 1897, the commission issued an order requiring the railroad companies participating in such transportation to make answer thereto. Subsequently hearings were had thereunder, and the

testimony of officers of some of the railroad companies parties to the joint traffic agreement was taken. A transcript of such of it as referred to the joint traffic agreement, or to the operation thereof, is herewith certified.

JAMES L. CLARK, a witness on behalf of the commission, being duly sworn, testified as follows:

Mr. DAY. Please give your name.

Mr. CLARK. James L. Clark.

Mr. DAY. Occupation.

Mr. CLARK. General Western freight agent Lake Shore and Michigan Southern Railway.

Mr. DAY. How long have you been connected with the Lake Shore road at this point?

Mr. CLARK. Twenty-five years.

Mr. DAY. What is the course of traffic moving from your road to the Baltimore and Ohio or from the Baltimore and Ohio to your road at this point?

Mr. CLARK. Via South Chicago.

Commissioner PROUTY. What is his connection with the road?

Mr. CLARK. General Western freight agent.

Commissioner PROUTY. The gentleman who makes the contracts?

Mr. DAY. Traffic moving from the Baltimore and Ohio road—is it reached by the Baltimore and Ohio rails?

Mr. CLARK. Comes by the Belt Line to South Chicago.

Mr. DAY. Who furnished the motive power for the transfer?

Mr. CLARK. I could not say.

Mr. DAY. Don't know whether the Baltimore and Ohio does it or your road or the Belt Line?

Mr. CLARK. No, sir.

Mr. DAY. Who is there in your employ that would be able to testify upon that point?

Mr. CLARK. I could ascertain and inform you. I could ascertain for you.

Mr. DAY. You have no subordinate who is familiar with your physical transfer of property from your road to the other road?

Mr. CLARK. Well, I know, as a rule, myself, but I could not tell you what engine does it.

Mr. DAY. I didn't ask you what engine. I asked you which company furnished the power—whether it was done by the Lake Shore, when the transfer was effected, or whether it was done by the Baltimore and Ohio or the Belt Line?

Mr. CLARK. No; I could not say.

Mr. DAY. You can not even give me the name of one of your subordinates who does know?

Mr. CLARK. Our local agent at South Chicago would know.

Mr. DAY. What is his name?

Mr. CLARK. Mr. Frank Stewart.

Mr. DAY. He lives at Chicago?

Mr. CLARK. Yes, sir.

Mr. DAY. Do you know his address?

Mr. CLARK. South Chicago.

Mr. DAY. Do you know his number?

Mr. CLARK. I could not tell you.

Mr. DAY. What elevators are there on the Lake Shore road, or that are owned or controlled by the Lake Shore Company?

Mr. CLARK. None.

Mr. DAY. Are there any elevators standing on the right of way or the property of the Lake Shore Company?

Mr. CLARK. Yes, sir.

Mr. DAY. Where?

Mr. CLARK. Englewood.

Mr. DAY. Who operates that elevator?

Mr. CLARK. The Lake Shore Transfer Company.

Mr. DAY. What grain firm is directly operating that elevator?

Mr. CLARK. It is for the use of all the grain people of Chicago.

Mr. DAY. Public elevator?

Mr. CLARK. Yes, sir.

Mr. DAY. Is it not operated by some other concern than the Lake Shore Transfer Company?

Mr. CLARK. Yes, sir.

Mr. DAY. Who?

Mr. CLARK. Lasier & Hooper.

Mr. DAY. Are there any other elevators that are on the right of way?

Mr. CLARK. No, sir.

Mr. DAY. Do you know anything about the lease from the Lake Shore road to the Lake Shore Transfer Company?

Mr. CLARK. I think you have a copy of the contract.

Mr. DAY. I ask you if you are familiar with it?

Mr. CLARK. Yes; I have read it. I could not recite the contents of it.

Mr. DAY. How are you advised that Lasier & Hooper operate that elevator? You say it was leased to the Lake Shore Transfer Company?

Mr. CLARK. Yes, sir.

Mr. DAY. You understand that the Lake Shore Transfer Company has leased to Lasier & Hooper?

Mr. CLARK. No, sir.

Mr. DAY. What is your understanding in respect to that?

Mr. CLARK. They handle the business of the elevator—that is, Lasier & Hooper.

Mr. DAY. Isn't it handled by the company to whom your company leased it?

Mr. CLARK. The Lake Shore Company has nothing to do with it—the Lake Shore Railroad.

Mr. DAY. Nor has the Lake Shore Transfer Company?

Mr. CLARK. Yes, sir; the Lake Shore Transfer Company are the people who own the elevator.

Mr. DAY. They don't operate it?

Mr. CLARK. Yes, they operate it, if you please; but Lasier & Hooper are the ones that manage it.

Mr. DAY. The Lake Shore Transfer Company operate it?

Mr. CLARK. Yes.

Mr. DAY. But Lasier & Hooper manage it?

Mr. CLARK. Yes, sir.

Mr. DAY. That is your understanding?

Mr. CLARK. Yes, sir.

Mr. DAY. Lasier & Hooper are grain merchants?

Mr. CLARK. Yes, sir.

Mr. DAY. They ship constantly over your road, do they not—largely?

Mr. CLARK. Yes, sir.

Mr. DAY. Does your company pay them, or that elevator concern, anything for transfer charges—for transferring grain?

Mr. CLARK. Yes, sir.

Mr. DAY. What do you pay them?

Mr. CLARK. We pay them as provided for by the joint committee rules.

Mr. DAY. I asked you what you paid them?

Mr. CLARK. Oh, what sum; $1.50 a car.

Mr. DAY. For all grain?

Mr. CLARK. For all grain.

Mr. DAY. You pay them all for that grain alike—paid by the car, not by weight?

Mr. CLARK. By the car.

Mr. DAY. Is it the car in or is it the car out?

Mr. CLARK. It is the car out.

Mr. DAY. Then, if two cars come in, weighing 30,000 to 40,000 pounds each, and they are turned into one car, you pay them $1.50; is that right?

Mr. CLARK. That is right.

Mr. DAY. Is any allowance made by your company to Lasier & Hooper on any other account?

Mr. CLARK. No, sir.

Mr. DAY. And in no other form?

Mr. CLARK. No, sir.

Mr. DAY. Directly or indirectly?

Mr. CLARK. In no other way, sir.

Mr. DAY. For any service?

Mr. CLARK. For any service.

Mr. DAY. What does your company charge Lasier & Hooper for delivering grain to that elevator?

Mr. CLARK. We make no charge.

Mr. DAY. What do you charge them for carrying it away?

Mr. CLARK. We do it ourselves.

Mr. DAY. No charges made?

Mr. CLARK. No charges made.

Mr. DAY. Nothing is imposed upon the traffic—no burden for carrying the car to the elevator or taking it away?

Mr. CLARK. No, sir.

Mr. DAY. You make any charge when the claim comes from another road for shunting into that elevator?

Mr. CLARK. You mean Eastern railroad?

Mr. DAY. Well, Western or Eastern.

Mr. CLARK. We make no charge for taking care of the business to and from the elevator.

Mr. DAY. Under any circumstances?

Mr. CLARK. Unless it might be shipped by another Eastern railroad. In that case we impose $3 per car charge.

Mr. DAY. But you do it in that instance?

Mr. CLARK. Yes; in that instance only.

Mr. DAY. No other charge is made for switching cars of grain to or from the elevator, excepting in the single instance, or in the case where grain is to be transported east over some other line than yours—than the Lake Shore and Michigan Southern?

Mr. CLARK. The Lake Shore and Michigan Southern.

Mr. DAY. Do you have anything to do with the performance or carrying into effect of the contract between the Lake Shore and Michigan Southern and the Lake Shore Transfer Company?

Mr. CLARK. No, sir.

Mr. DAY. You do not know, then, whether any excess of the $3 a car

or the $3 per car is imposed against Lasier & Hooper in any other case than the one you have named?

Mr. CLARK. I think I would know it if it was done.

Mr. DAY. Do you have anything to do with the settlement between the Lake Shore and Michigan Southern and the Lake Shore Transfer Company?

Mr. CLARK. Yes, sir.

Mr. DAY. You audit the settlement?

Mr. CLARK. Yes, sir; the bills are filed with me.

Mr. DAY. They are filed with you?

Mr. CLARK. Yes, sir.

Mr. DAY. All their claims against your company for transfer service are filed with you?

Mr. CLARK. Yes, sir.

Mr. DAY. And the claims of your company against them, for transferring of grain or for switching it, pass through your hands too?

Mr. CLARK. Let me understand your question.

Mr. DAY. You say that the claims of Lasier & Hooper or the Lake Shore Transfer Company against the Lake Shore and Michigan Southern Railroad Company for transferring grain are filed with you?

Mr. CLARK. Yes, sir.

Mr. DAY. I ask you if the claims of your company—the railroad company—against the transfer company for the $3 per car for switching also pass through your hands?

Mr. CLARK. No, sir; it does not.

Mr. DAY. Through whose hands do those claims pass?

Mr. CLARK. Pass through our local department.

Mr. DAY. Who is the individual who has jurisdiction of those matters?

Mr. CLARK. Mr. C. H. Clauson, local agent of the railroad company.

Mr. DAY. Where is his office?

Mr. CLARK. Twelfth street and Pacific avenue.

Mr. DAY. He is the local agent of the railroad company?

Mr. CLARK. Yes, sir.

Mr. DAY. Oh, whom do you settle with—Lasier & Hooper or the Lake Shore Transfer Company?

Mr. CLARK. The Lake Shore Transfer Company.

Mr. DAY. They are represented by Lasier & Hooper—that company—in this settlement?

Mr. CLARK. No, sir; the vouchers are signed by the Lake Shore Transfer Company.

Mr. DAY. Whom do you pay the money to?

Mr. CLARK. I don't pay the claims myself. They are paid by the Lake Shore Transfer Company.

Mr. DAY. Whom do you deal with; what individual?

Mr. CLARK. Of the Lake Shore Transfer Company?

Mr. DAY. Yes.

Mr. CLARK. His name is Wellman, I think. I am not sure. I think that is his name.

Mr. DAY. Can you give his initials?

Mr. CLARK. No; I could not.

Mr. DAY. He is a clerk for Lasier & Hooper?

Mr. CLARK. He is a clerk for the Lake Shore Transfer Company.

Mr. DAY. He is an employee of Lasier & Hooper?

Mr. CLARK. He might be considered so.

Mr. DAY. How would you consider it?

Mr. CLARK. I should consider it so.

Mr. DAY. Why didn't you say so first? You adjust those claims and on your adjustment a check is drawn in their favor, or a draft?

Mr. CLARK. Yes, sir; a check.

Mr. DAY. Who issues the check?

Mr. CLARK. The treasurer of the Lake Shore Company; the Lake Shore Railroad Company.

Mr. DAY. Does he send it to them, or does it pass through your hands?

Mr. CLARK. It does not pass through my hands.

Mr. DAY. How often do you make settlement with Lasier & Hooper?

Mr. CLARK. The bills are rendered monthly.

Mr. DAY. You keep a book account with them?

Mr. CLARK. No, sir.

Mr. DAY. What do you do with the accounts represented by them?

Mr. CLARK. Send them to Cleveland.

Mr. DAY. To whom?

Mr. CLARK. W. T. Smith.

Mr. DAY. What is the title of his office.

Mr. CLARK. He is the claim agent of the Lake Shore Railroad at Cleveland.

Mr. DAY. After you have prepared it you send it to Smith. When Smith approves it what becomes of the claim?

Mr. CLARK. The claim has to have the approval of Mr. Paul Rayner, the chief clerk of the joint-rate committee.

Mr. DAY. What is his position now?

Mr. CLARK. He is the chief inspector.

Mr. DAY. Of the Central Traffic Association at Chicago?

Mr. CLARK. Yes, sir.

Mr. DAY. How long has he been occupying that position?

Mr. CLARK. Many years.

Mr. DAY. He approves it as inspector?

Mr. CLARK. Yes, sir.

Mr. DAY. Does he have supervision over all the cars that are transferred from the Lake Shore Transfer Company to your road?

Mr. CLARK. Yes, sir.

Mr. DAY. And other roads?

Mr. CLARK. And other roads.

Mr. DAY. He keeps a record?

Mr. CLARK. Yes, sir.

Mr. DAY. After you approve of it, it has to be approved by Mr. Rayner?

Mr. CLARK. Yes, sir.

Mr. DAY. And then it goes to Mr. Smith, at Cleveland?

Mr. CLARK. Yes, sir.

Mr. DAY. And then from Mr. Smith where does it go?

Mr. CLARK. It has to be approved by the officials of the road, and thence to the treasurer for payment.

Mr. DAY. What is the capacity of this elevator?

Mr. CLARK. They can transfer about—working night and day—probably 120 cars.

Mr. DAY. What is its storage capacity?

Mr. CLARK. I could not say.

Mr. DAY. Can you give an approximate notion?

Mr. CLARK. I should imagine that it was 30,000 or 40,000 bushels.

Mr. DAY. Now, what other elevator is there on your right of way?

Mr. CLARK. There is no other elevator.
Mr. DAY. What other elevator do your rails extend to?
Mr. CLARK. No other.
Mr. DAY. The Chicago-O'Neill Grain Company?
Mr. CLARK. No, sir.
Mr. DAY. Have you examined the exhibit of your company filed with the commission?
Mr. CLARK. Yes, sir.
Mr. DAY. Was it drafted under your supervision?
Mr. CLARK. Yes, sir.
Mr. DAY. Will you explain to the commission why it was, in February—the last week of February—and the first week of March of this year, your company turned over to the Nickel Plate a large volume of grain and grain products—volume of traffic?
Mr. CLARK. Yes, sir.
Mr. DAY. Well, please do so.
Mr. CLARK. Because we were ahead of our allotment; it was to help the Nickel Plate.
Mr. DAY. Ahead of what allotment?
Mr. CLARK. The allotment that was agreed to by our company and other companies.
Mr. DAY. Who agreed to it? How do you know it was agreed to by your company? Who represented your company?
Mr. CLARK. I could not say.
Mr. DAY. Where was the agreement made?
Mr. CLARK. I could not give you that information.
Mr. DAY. When was it made?
Mr. CLARK. I could not give you the date.
Mr. DAY. How long ago, approximately?
Mr. CLARK. I would not dare state.
Mr. DAY. A year?
Mr. CLARK. Possibly. Yes, sir: a year, I think.
Mr. DAY. Made when the Joint Traffic Association effected its agreement, or subsequent to that?
Mr. CLARK. Yes, sir.
Mr. DAY. Who had charge of this traffic here?
Mr. CLARK. It was under my charge.
Mr. DAY. You remember the circumstances to which I refer?
Mr. CLARK. Yes, sir.
Mr. DAY. You directed that to be made, did you?
Mr. CLARK. Yes, sir.
Mr. DAY. How could you tell whether they are entitled to that under your agreement—under the agreement?
Mr. CLARK. We had statistics to exhibit that.
Mr. DAY. What percentage of the traffic were they entitled to out of Chicago—the Nickel Plate?
Mr. CLARK. The Nickel Plate?
Mr. DAY. Yes, sir.
Mr. CLARK. I can not just recall their percentage. I could not tell you what it is, in my mind.
Mr. DAY. What percentage was your road entitled to?
Mr. CLARK. 14.2 per cent.
Mr. DAY. What was the Pennsylvania entitled to?
Mr. CLARK. I would not dare say.
Mr. DAY. Approximately?
Mr. CLARK. I think it was 14.

Mr. DAY. The Michigan Central?
Mr. CLARK. 13.6.
Mr. DAY. The Pennsylvania, you say, about 14?
Mr. CLARK. Which company? There are two.
Mr. DAY. The whole outfit.
Mr. CLARK. More than that, would be the Fort Wayne.
Mr. DAY. The Fort Wayne?
Mr. CLARK. Yes, sir.
Mr. DAY. And the Panhandle, the Pittsburg, Cincinnati and St. Louis?
Mr. CLARK. I don't remember how much that is.
Mr. DAY. What approximation can you give? Have you any idea?
Mr. CLARK. No, sir.
Mr. DAY. What was the Baltimore and Ohio percentage?
Mr. CLARK. I could not say.
Mr. DAY. Can you give an approximate idea?
Mr. CLARK. That is all on record. I would not like to say.
Mr. DAY. Have you a copy of it?
Mr. CLARK. Yes, sir.
Mr. DAY. A copy of the agreement?
Mr. CLARK. I have a copy of these per cents.
Mr. DAY. Where did you get it? Is it official?
Mr. CLARK. I could not say whether it is official or not; it is on file.
Mr. DAY. You received it, and you are acting under it. It is official, then?
Mr. CLARK. Yes, sir.
Mr. DAY. From whom did you receive it?
Mr. CLARK. It is published by the association.
Mr. DAY. What association?
Mr. CLARK. By the Central Freight Association?
Mr. DAY. By the Central Freight Association?
Mr. CLARK. Yes, sir; I feel sure.
Mr. DAY. From whom did you receive this percentage agreement?
Mr. CLARK. I could not tell.
Mr. DAY. Would you get a paper from your company without knowing the source from which you received it?
Mr. CLARK. No, sir?
Mr. DAY. Tell the commission from whom you received it?
Mr. CLARK. I could not give you that information.
Mr. DAY. Where is the paper?
Mr. CLARK. It is filed, I think, in our office.
Mr. DAY. In your office? Will you produce it to-morrow morning?
Mr. CLARK. Yes, sir.
Mr. DAY. Will you also bring along the record showing the percentages that each of the lines running east was entitled to?
Mr. CLARK. Yes, sir.
Mr. DAY. And what on the 27th of February, and from then to the 8th of March, inclusive, the Nickel Plate was short of traffic under that agreement and what your road was over?
Mr. CLARK. What date was that?
Mr. DAY. Commencing February 27, down to and including March 8. You say you remember this particular instance, Mr. Clark. Who did you direct to turn this traffic over to the Baltimore and Ohio?
Mr. CLARK. Our local agent.
Mr. DAY. Where did he turn it over—where was it turned over—at what point?

Mr. CLARK. At Englewood.
Mr. DAY. Is that what you call South Chicago?
Mr. CLARK. No, sir.
Mr. DAY. You connect with the Baltimore and Ohio at Englewood?
Mr. CLARK. Connect with the Nickel Plate at Englewood.
Mr. DAY. There are no transfer rails there?
Mr. CLARK. They don't intersect there; they come to that point after traffic.
Mr. DAY. From whose rails?
Mr. CLARK. From our rails.
Mr. DAY. Where do they come from to strike your rails? Where do they strike your rails?
Mr. CLARK. At Grand Crossing.
Mr. DAY. Then they come out on your rails from Grand Crossing to Kensington?
Mr. CLARK. No.
Mr. DAY. Describe it.
Mr. CLARK. They come to Englewood and take traffic from us at that point, and their own rails commence at Grand Crossing.
Mr. DAY. They go over your rails for about 5 miles?
Mr. CLARK. Not that far.
Mr. DAY. What is the distance?
Mr. CLARK. About 4 miles, possibly.
Mr. DAY. They come after this traffic—they send their engine?
Mr. CLARK. Yes, sir.
Mr. DAY. How would they be notified that the traffic was ready for them?
Mr. CLARK. By our local agent.
Mr. DAY. Did you indicate how that traffic was to be disposed of after it reached the end of the rails of the Nickel Plate?
Mr. CLARK. Yes, sir.
Mr. DAY. How?
Mr. CLARK. It should take the same connecting Eastern line as if it had gone via the Lake Shore.
Mr. DAY. You remember what it was in that instance—you remember in that particular instance?
Mr. CLARK. It was probably many cars of traffic going to different points.
Mr. DAY. But these all seem to have gone by the same route.
Mr. CLARK. Do they?
Mr. DAY. Look at that [showing witness paper].
Mr. CLARK. Yes, sir.
Mr. DAY. Have you got it there? It is the New York Central.
Mr. CLARK. The New York Central; yes, sir.
Mr. DAY. Now, I find that you turned over about the same time, or on the 26th and 27th of February——
Mr. CLARK. 26th and 27th?
Mr. DAY. 26th and 27th of February you turned over about 150 cars of freight to the Baltimore and Ohio.
Mr. CLARK. No; I don't recall that, sir.
Mr. DAY. Don't remember that at all?
Mr. CLARK. That we turned any freight to them.
Mr. DAY. No; the Baltimore and Ohio turned it over to you.
Mr. CLARK. No.
Mr. DAY. You are right; that is another road. Your road has nothing to do with that. I was in error.

Mr. CLARK. Yes, sir.

Mr. DAY. I find between the 1st and the 6th of March you turned over a considerable volume of business, chiefly oats, to the Nickel Plate.

Mr. CLARK. Yes, sir.

Mr. DAY. It was all of the same kind—they were simply behind and you were evening up?

Mr. CLARK. Yes, sir.

Mr. DAY. Was that the general practice at Chicago during that period of time?

Mr. CLARK. Yes, sir.

Mr. DAY. Were these percentages generally adhered to?

Mr. CLARK. We were trying to.

Mr. DAY. The purpose was to divide the traffic according to the fixed percentages agreed upon by some railroad associations?

Mr. CLARK. Yes, sir.

Mr. DAY. Do you know a concern, a very large shipper, known as the P. W. F. M. & Co.?

Mr. CLARK. The Pittsburg, Fort Wayne and Chicago?

Mr. DAY. This is a shipper—the P. W. F. M. Co.

Mr. CLARK. Is it Bartlett, Frazier & Co.?

Mr. DAY. Do you know a concern at Toledo—Reynolds Bros.?

Mr. CLARK. I know of them; yes, sir.

Mr. DAY. Do you have any business relations with them?

Mr. CLARK. No, sir.

Mr. DAY. Directly or indirectly?

Mr. CLARK. None whatever.

Mr. DAY. Commencing about January 1, and running through the month of January, a very large shipment of corn by the Harris Company is shown. Did you have anything to do at all with securing that traffic?

Mr. CLARK. No, sir.

Mr. DAY. You had nothing whatever to do with it?

Mr. CLARK. No, sir.

Mr. DAY. Directly or indirectly?

Mr. CLARK. Directly or indirectly.

Mr. DAY. Or with fixing a rate or naming a rate?

Mr. CLARK. No, sir.

Mr. DAY. Or anything to do with collecting the charges—the transportation charges?

Mr. CLARK. No, sir.

Mr. DAY. Or dividing?

Mr. CLARK. No, sir.

Mr. DAY. Or routing the traffic?

Mr. CLARK. No, sir.

Mr. DAY. Who made the contract for that traffic?

Mr. CLARK. I could not tell you, sir.

Mr. DAY. Who is your immediate superior, Mr. Clark?

Mr. CLARK. Mr. G. J. Grammer.

Mr. DAY. He is the general freight agent?

Mr. CLARK. The general traffic manager.

Mr. DAY. When you receive instructions respecting a routing of freight or rates on traffic, from whom do you get them?

Mr. CLARK. The rates are made by the association.

Mr. DAY. I asked you from whom you get the instructions?

Mr. CLARK. We get the instructions from the association.

Mr. DAY. What association?

Mr. CLARK. The Central Freight Association.

Mr. DAY. Is the Lake Shore and Michigan Southern in the Central Freight Association?

Mr. CLARK. Yes, sir.

Mr. DAY. The Central Freight Association makes the rate to the trunk-line territory?

Mr. CLARK. Approved by the trunk lines.

Mr. DAY. They are approved by the trunk lines?

Mr. CLARK. Yes, sir.

Mr. DAY. Rates from here to the seaboard are made by the Central Freight Association, subject to the approval of the Trunk Line Association?

Mr. CLARK. Yes, sir.

Mr. DAY. When you receive instructions respecting traffic, the securing of traffic, or in making of contracts for traffic for transportation over your line, from whom do you get your instructions?

Mr. CLARK. I would not get any instructions.

Mr. DAY. You have carte blanche to go in and represent the company?

Mr. CLARK. I represent the company in that respect.

Mr. DAY. Do you have any superior in that respect, who exercises supervision over your work?

Mr. CLARK. No, sir.

Mr. DAY. To whom do you report?

Mr. CLARK. To Mr. G. J. Grammer.

Mr. DAY. If you should on any account, whether it was legal or illegal, make a concession, carry traffic for the export rate or as through traffic when it turned out to be local—carried at through rate when it was in fact local traffic, would you make a report of your transactions?

Mr. CLARK. I would not make such an arrangement.

Mr. DAY. You never have made such an arrangement? You have never made any concession in rates?

Mr. CLARK. No, sir.

Mr. DAY. You never contracted for traffic below the published tariff rates?

Mr. CLARK. No, sir.

Mr. DAY. Never?

Mr. CLARK. Covered by this inquiry?

Mr. DAY. I am asking you generally. I am not asking you about the 1st of January. During the past three years?

Mr. CLARK. I will have to ask my counsel about that.

Mr. DAY. You will have to ask your counsel whether you did it?

Mr. CLARK (after consultation with counsel). I have before the 1st of January.

Mr. DAY. In those instances, to whom did you make report of what you did?

Mr. CLARK. My superior, Mr. G. J. Grammer.

Mr. DAY. That is what I wanted to know. When you routed this traffic, took the traffic from your own line and turned it over to a competing line, to whom did you report that transaction?

Mr. CLARK. Mr. G. J. Grammer.

Mr. DAY. How many clerks have you in your employ in Chicago?

Mr. CLARK. There are seven or eight clerks in my immediate office; something like that.

Mr. DAY. Do you keep a copy of your correspondence?

Mr. CLARK. Yes, sir.

Mr. DAY. Will you produce to the commission the correspondence

which you had with Mr. Grammer or the letters which you wrote to Mr. Grammer respecting the turning over of this traffic to the Nickel Plate road in February and March?

Mr. CLARK. Yes, sir.

Mr. DAY. Who participated in the making up of this report to the commission?

Mr. CLARK. Our local department; our local agent.

Mr. DAY. What do you say his name is?

Mr. CLARK. C. H. Clauson.

Mr. DAY. Who else?

Mr. CLARK. His help; I could not give the names.

Mr. DAY. Did your auditor or the officer who subscribed to the affidavit examine it?

Mr. CLARK. I could not say.

Mr. DAY. He did not in your presence?

Mr. CLARK. No, sir.

Mr. DAY. I do not find in this report, Mr. Clark, any mention of the traffic you turned over to competing carriers during this period of time.

Mr. CLARK. I do not think it is included. The traffic included in that is such as passed over our rails only.

Mr. DAY. You mean from one end of the Lake Shore to the other—from Chicago to the trunk-line territory?

Mr. CLARK. Yes, sir.

Mr. DAY. You were asked to name the connecting carriers, rail or water, switching or transfer line, to which you delivered the traffic, but that which you turned over to your competitors is not mentioned. Did you turn over on behalf of the Lake Shore road any other traffic between January 1 and the 15th of March than that which I have especially called your attention to?

Mr. CLARK. I think not.

Mr. DAY. Will you examine the records of your office and ascertain and make report to the commission to-morrow how that is?

Mr. CLARK. From February 1 to March 8—then there was another date there.

Mr. DAY. I was, I think, within that period. It was a different lot. Now, I will ask you to examine your records and make report to the commission to-morrow of other traffic that you turned over or caused to be turned over to a competing line. Have you any information respecting the terms under which this traffic—this Harris traffic—was carried?

Mr. CLARK. No, sir.

Mr. DAY. You have no information at all?

Mr. CLARK. Other than it paid tariff rates.

Mr. DAY. How do you know that it paid tariff rates?

Mr. CLARK. It is charged that way.

Mr. DAY. It is charged that way on the papers; that is the only information you have on the subject?

Mr. CLARK. If there were reductions I presume I would know of it.

Mr. DAY. Who would have informed you?

Mr. CLARK. It would have been done through me, probably.

Mr. DAY. Do you wish to be understood that so far as you have any information this 400 or 500 cars of corn——

Mr. CLARK. I do not think there is that much.

Mr. DAY. It is pretty close on to it.

Mr. CLARK. Five hundred cars?

Mr. DAY. Several hundred cars. You examined the report commencing January 2?

Mr. CLARK. I do not think there were 200 cars of it.

Mr. DAY. Yes, sir; there are all of 200—more than 200. Do you wish to be understood as stating that in respect to that traffic that it paid the full published tariff rates?

Mr. CLARK. Yes, sir.

Mr. DAY. Without any reduction, rebate, directly or indirectly, made in respect to it?

Mr. CLARK. Yes, sir.

Mr. DAY. The full tariff was collected and retained?

Mr. CLARK. Yes, sir.

Mr. DAY. And neither by direction or indirection was any of it paid back or remitted?

Mr. CLARK. No, sir.

Mr. DAY. On any account whatever, so far as you know or have any information?

Mr. CLARK. Yes, sir.

Mr. DAY. Do you know whose traffic that was?

Mr. CLARK. No, sir; unless it is expressed there.

Mr. DAY. You do not know whether, in fact, that was the traffic of Armour & Co.?

Mr. CLARK. I do not.

Mr. DAY. Or Counselman?

Mr. CLARK. I only know what the record reads, from reference to it.

Mr. DAY. Have you had any business relations by or on behalf of Armour or Counselman or Reynolds Bros. in the past five months?

Mr. CLARK. No, sir.

Mr. DAY. Acting in your capacity as agent of the Lake Shore Road?

Mr. CLARK. No, sir.

Mr. DAY. How did this traffic go—by one of the fast freight lines?

Mr. CLARK. Yes, sir.

Mr. DAY. Or was it ordinary traffic?

Mr. CLARK. It went by the Red Line.

Mr. DAY. Who is the agent of the Red Line?

Mr. CLARK. Here?

Mr. DAY. Yes, sir.

Mr. CLARK. Mr. Duke Nicholson.

Mr. DAY. Is he one of your employees?

Mr. CLARK. He is a line agent and under direction of my office, I think, as regards this traffic.

Mr. DAY. What is his name?

Mr. CLARK. Duke Nicholson.

Mr. DAY. Do you know F. W. Fowkes?

Mr. CLARK. No, sir.

Mr. DAY. Do you know where his place of business is?

Mr. CLARK. No, sir.

Mr. DAY. Have you had any business relations with him?

Mr. CLARK. No, sir.

Mr. DAY. You do not know who he is?

Mr. CLARK. I do not know such a gentleman.

Mr. DAY. Have you had any relations with Hancock & Co.?

Mr. CLARK. No, sir.

Mr. DAY. Or any of their agents or anybody representing them?

Mr. CLARK. No, sir.

Mr. DAY. There is a considerable traffic here carried to the order of Noble Jones without any consignor being mentioned. Could not you give the consignor?

Mr. CLARK. Does not the statement state it?

Mr. DAY. No.

Mr. CLARK. May I glance at it?

Mr. DAY. Yes, sir.

Mr. CLARK. (After referring to statement.) He was both the consignee and consignor.

Mr. DAY. Did you know, Mr. Clark, before this great shipment of corn consigned to Harris by Harris that your road was going to receive that traffic?

Mr. CLARK. I knew nothing of it.

Mr. DAY. You had no advance information?

Mr. CLARK. No, sir.

Mr. DAY. Here is that particular instance I spoke of of Noble Jones (referring to statement); it continues over through the next page.

Commissioner PROUTY. What port did that shipment go to, Mr. Day?

Mr. DAY. To New York.

Commissioner PROUTY. For export?

Mr. DAY. How was it, Mr. Clark; for export?

Mr. CLARK. So far as I know, for local delivery.

Mr. DAY. A large part of it appears to have been shipped out by your line after the export rate was put in?

Mr. CLARK. Then it was for export. I am judging from the rate. It was at 23 cents. It was both the local and export rate at that time.

Mr. DAY. They both took the same rate?

Mr. CLARK. Yes, sir.

Mr. DAY. When did you put in that rate?

Mr. CLARK. January 15, I think.

Mr. DAY. This appears to be carried at the 23-cent rate.

Mr. CLARK. That was the tariff at that time.

Mr. DAY. On January 16?

Mr. CLARK. It originated before the 15th. Does it not so state?

Mr. DAY. Did you permit of rebilling on your line at that time?

Mr. CLARK. It is consigned right through.

Mr. DAY. Did your line permit rebilling and reconsigning?

Mr. CLARK. Yes, sir.

Mr. DAY. The dates under the column asking the name of the connecting carrier, rail or water, switching or transfer line from which received and waybill reference, the number and date. You give the Chicago, Burlington and Quincy number and date. Is that the date it originated on the Mississippi River, or the date of your reception of it?

Mr. CLARK. The date of shipment from the Mississippi River.

Mr. DAY. That is the date of the Chicago, Burlington and Quincy waybill?

Mr. CLARK. Yes, sir.

Mr. DAY. Now, when this traffic came to your line, where did it come from? Where did you get it?

Mr. CLARK. It was delivered to us by the Chicago, Burlington and Quincy at Forty-third street.

Mr. DAY. In their cars?

Mr. CLARK. In their cars.

Mr. DAY. And you put it into your elevators?

Mr. CLARK. The traffic passed through our elevator into our cars.

Mr. DAY. What elevator?

Mr. CLARK. I should say the Lake Shore Transfer.

Mr. DAY. It is on your property?

Commissioner PROUTY. From what point was that 23-cent rate?

Mr. DAY. The Mississippi River, it appears here. The Harrises have a great elevator at Burlington, Iowa, and I assume it came from that elevator. Do you know, Mr. Clark, where the grain came from?

Mr. CLARK. I could not say.

Mr. DAY. It appears to be billed from Chicago, but the report here shows Mississippi River.

Commissioner PROUTY. What was the rate from the Mississippi River to New York at that time—23 cents?

Mr. DAY. What was the tariff, Mr. Clark, from Chicago to New York at that time?

Mr. CLARK. Twenty cents.

Commissioner PROUTY. What was the rate from the Mississippi River at that time?

Mr. CLARK. Twenty-three cents.

Commissioner PROUTY. Were the domestic and export rates the same at that time?

Mr. CLARK. Yes, sir.

Mr. DAY. They were during a part of this time, your honor. They were when the shipment had its origin.

Commissioner PROUTY. They were not the same when it was carried through, were they?

Mr. CLARK. If the billing says it was at the export rate, it went for export.

Commissioner PROUTY. I say, the export rate and the domestic rate were not the same the 1st of January, were they?

Mr. CLARK. Yes, sir.

Commissioner PROUTY. From Chicago to New York?

Mr. CLARK. Yes, sir.

Mr. DAY. When did the export drop under the domestic rate?

Mr. CLARK. I think January 15.

Commissioner PROUTY. Did that 23 cent rate from the Mississippi River to New York include transfer charges at Chicago?

Mr. CLARK. Yes, sir.

Commissioner PROUTY. That was the entire rate through that the shipper paid?

Mr. CLARK. Yes, sir.

Mr. DAY. Where did the Chicago, Burlington and Quincy turn this traffic over to you?

Mr. CLARK. It went to the St. Charles Air Line and they took it on our rails to Forty-third street, where we receipted for it?

Mr. DAY. What is the St. Charles Air Line?

Mr. CLARK. It is a connecting line that goes across at Sixteenth street.

Mr. DAY. What is the length of that line?

Mr. CLARK. A mile or so.

Mr. DAY. Is it more than a mile?

Mr. CLARK. I could not say.

Mr. DAY. What is the charge made by that line for transferring a car?

Mr. CLARK. I have not it in mind.

Mr. DAY. Can you approximate it?

Mr. CLARK. It is very small.

Mr. DAY. What company controls that line?

Mr. CLARK. I could not say.

Mr. DAY. Have you any information on the subject?

Mr. CLARK. I think jointly by several companies.

Mr. DAY. What companies?

Mr. CLARK. The Illinois Central, the Michigan Central—I am not sure of this.

Mr. DAY. What others?

Mr. CLARK. That is all, I think.

Mr. DAY. Just those two?

Mr. CLARK. I can not recall any more.

Mr. DAY. Now, this Harris traffic. It appears that a large quantity of this traffic was carried five days after the export rate went into effect, and yet it appears to be billed at the domestic rate from the Mississippi River to the Atlantic Seaboard. Was the billing in respect to that traffic ever corrected to conform to the export rate?

Mr. CLARK. No, sir; it is not exhibited there.

Mr. DAY. I asked you what the fact is, without reference to whether it is exhibited here or not. I asked whether the billing was ever corrected to conform to the export rate afterwards.

Mr. CLARK. No, sir.

Mr. DAY. Then that great shipment bore a rate of 5 cents a hundred pounds greater than the current rate at the time you were carrying the traffic?

Mr. CLARK. The originating point is the date that governs.

Mr. DAY. Did that govern in all the export traffic?

Mr. CLARK. Yes, sir.

Mr. DAY. Are you sure of that? You say it did. I find some of the exhibits here that bore the export rate on the 15th of January, and the traffic originated a week earlier than that. I want to know what you know about the fact. Do you know whether or not, on this Harris traffic, the billing was corrected to conform to the export rate? I think that is the railroad phrase, "correcting," where it is reconsigned or the rate is changed en route?

Mr. CLARK. Yes, sir.

Mr. DAY. Did you have any information as to whether that was subsequently corrected to bear the export rate instead of the domestic?

Mr. CLARK. I could not say.

Mr. DAY. You have no information on the subject at all?

Mr. CLARK. No, sir.

Mr. DAY. You have not been informed at all?

Mr. CLARK. No, sir.

Mr. DAY. Here is some of the Harris traffic—some of it that is going at an export rate. (Referring to statement.) It started on its journey on the Chicago, Burlington and Quincy on the 22d day of January (December?), nearly thirty days before the export rate was put into effect. I would like to ask you, Mr. Clark, if traffic comes in from Mississippi River and is reconsigned on your road, what length of time, within what time limit, must it be reconsigned before you permit it to be rebilled? Say, traffic that came from the Chicago, Burlington and Quincy, within what time limit must it be reconsigned to conform to your rules?

Mr. CLARK. Seventy-two hours.

Mr. DAY. Are you aware of any instance in which traffic remained more than seventy-two hours and was then reconsigned?

Mr. CLARK. No, sir.

Mr. DAY. You have no information on that subject?

Mr. CLARK. No, sir.

Mr. DAY. If traffic had remained here a week, would you be advised of that? How would you be informed as to the length of time traffic had been there?

Mr. CLARK. Disregarding the rules, it would remain longer than that.

Mr. DAY. I understood that was a rule of the joint traffic association?

Mr. CLARK. Yes, sir.

Mr. DAY. I ask whether you have permitted traffic to be reconsigned at Chicago for transit over your road where it had been in Chicago for a longer period than seventy-two hours?

Mr. CLARK. I think not.

Mr. DAY. What evidence do you have that traffic is to be exported? What evidence do you require to permit traffic to go at 5 cents per 100 pounds lower rate than you charge generally to the shipper?

Mr. CLARK. If a foreign bill of lading is not issued here for it we require that it shall be billed to the care of a foreign freight agent at the seashore.

Mr. DAY. And if a foreign bill of lading is issued here?

Mr. CLARK. That settles it.

Mr. DAY. That settles it?

Mr. CLARK. Yes, sir.

Mr. DAY. Is there anything in the limitations imposed by the companies which you represent that prevents that bill of lading being transferred en route?

Mr. CLARK. It could not be.

Mr. DAY. Why not?

Mr. CLARK. You mean the foreign bill of lading?

Mr. DAY. Yes, sir.

Mr. CLARK. The bill of lading is issued on a bona fide contract with the steamship company and the ship's papers are sent directly to the seaboard for delivery to the steamship company. That seems to cover it.

Mr. DAY. Do you mean to say that the bill of lading that you require must be issued here by the agent of a steamship company?

Mr. CLARK. No; we issue a foreign bill of lading in connection with the steamship lines.

Mr. DAY. May that traffic not be entitled to be changed between here and New York? Is not the bill of lading assignable, negotiable?

Mr. CLARK. I do not think it is possible to have it changed.

Mr. DAY. Do not the joint traffic rules permit of reconsignment in the Trunk Line territory where the traffic takes a greater rate than 100 per cent of the Chicago rate?

Mr. CLARK. This export grain?

Mr. DAY. Any grain, without limit.

Mr. CLARK. It is proper to make one change on grain in transit.

Mr. DAY. As between Chicago and the seaboard?

Mr. CLARK. Yes, sir.

Mr. DAY. Is not an exception made in case of grain that takes 116 per cent of the Chicago rate, that it shall have the right of an additional reconsignment in Trunk Line territory?

Mr. CLARK. No, sir; one change is all that is allowed.

Mr. DAY. Do you wish the commission to understand you as saying that you exercise such a supervision over the traffic that traffic that is designed for export may not be resold at the seaboard for domestic consumption; that you can prevent it?

Mr. CLARK. I could not prevent it; no, sir.

Mr. DAY. Traffic that is carried at the export rate may be used at the seaboard for domestic consumption?

Mr. CLARK. I could not say. It passes out of our control when it leaves our rails.

Mr. DAY. Then a person—designing person—can get the benefit of an export rate for traffic designed for domestic consumption to be consumed at the seaboard?

Mr. CLARK. I think not.

Mr. DAY. You think not?

Mr. CLARK. Yes, sir.

Mr. DAY. I would like to have you state how it can be prevented.

Mr. CLARK. Because it is billed to the care of foreign freight agents, who would not permit it to be delivered locally.

Mr. DAY. He sees it on board ship?

Mr. CLARK. Well, it is under his charge—his direction. It can not be delivered, only by his order.

Mr. DAY. Is he your agent?

Mr. CLARK. He is the agent of the lines.

Mr. DAY. What lines?

Mr. CLARK. The lines that we might go by—the Red Line. It would be the agent of the Red Line in that case—the foreign freight agent.

Mr. DAY. Do all the lines that operate over your road maintain a foreign agent at New York, Philadelphia, Baltimore, and Newport News?

Mr. CLARK. Each of the trunk-line railroads has such a gentleman.

Mr. DAY. And all the traffic over their respective lines goes each to its own foreign agent?

Mr. CLARK. Yes, sir.

Mr. DAY. Do you have a foreign agent for export traffic at Newport News?

Mr. CLARK. We do not operate via Newport News.

Mr. DAY. Do not you transfer to the Big Four?

Mr. CLARK. No, sir.

Mr. DAY. Or the Norfolk and Western?

Mr. CLARK. No, sir.

Mr. DAY. The Pittsburg and Western?

Mr. CLARK. No, sir.

Mr. DAY. You do not connect with the Big Four?

Mr. CLARK. Not on traffic for export via Newport News.

Mr. DAY. What is there to prevent it?

Mr. CLARK. There would be no benefit coming to the Lake Shore Railroad by such a connection.

Mr. DAY. Do you have any traffic going over the Baltimore and Ohio?

Mr. CLARK. No, sir.

Mr. DAY. Will you have your agent of the Red Line here to-morrow?

Mr. CLARK. Yes, sir.

Mr. DAY. What did you say his name was?

Mr. CLARK. Mr. Duke Nicholson.

The CHAIRMAN. Had you not better suspend your examination, Mr. Day, until morning?

Mr. DAY. I think it would be well.

At 4.30 p. m. the commission adjourned till to-morrow, Wednesday, at 10 o'clock a. m.

THIRD DAY.

CHICAGO, ILL., *June 9, 1897, 10 a. m.*

The CHAIRMAN. Mr. Day, are you ready to proceed?

Mr. DAY. I will ask Mr. Clark to resume the stand.

JAMES L. CLARK resumed the stand.

Mr. DAY. You were to look over your files and produce the correspondence that was referred to?

Mr. CLARK. Yes, sir.

Mr. DAY. The correspondence with Mr. Grammer?

Mr. CLARK. Yes, sir.

Mr. DAY. You have not the originals with you but you have copies?

Mr. CLARK. Yes, sir.

Mr. DAY. But you have sent for the originals?

Mr. CLARK. Yes, sir.

Mr. DAY. You have sent for the original papers respecting the division of traffic?

Mr. CLARK. Yes, sir.

Mr. DAY. What is that?

Mr. CLARK. This is a telegram from Cleveland, addressed to me. Shall I read the telegram?

Mr. DAY. You may read it.

Mr. CLARK. This is dated Cleveland, February 25:

Be sure to see that our tonnage is reduced. If it is necessary to set Red Line or Lehigh Valley tonnage over to the Nickel Plate in order to reduce our excess, you can do so, but before doing it you must arrange with the Nickel Plate to deliver Red Line business to the New York Central and Lehigh Valley to the Lehigh Valley at Buffalo. I am very anxious that our current business shall show a reduction at once.

G. J. GRAMMER.

Mr. DAY. You had some correspondence with Mr. Grammer respecting this telegram—regarding this telegram?

Mr. CLARK. Well, I think not.

Mr. DAY. Then did you not have some correspondence respecting——

Mr. CLARK. He has copies of reports showing all the conditions all the time.

Mr. DAY. Did you not have letters from him on this subject?

Mr. CLARK. Not until the receipt of this.

Mr. DAY. This was the first communication from Mr. Grammer respecting the pooling?

Mr. CLARK. Respecting the diversion of that traffic.

Mr. DAY. Well, diversion. Had you written to him on the subject?

Mr. CLARK. No, sir.

Mr. DAY. Nor telegraphed him, nor communicated with him in any way?

Mr. CLARK. No, sir.

Mr. DAY. Now, you say this is the first. What correspondence did you have with him after the receipt of this telegram? Did you report to him what you had done?

Mr. CLARK. Yes, sir.

Mr. DAY. I asked you for all correspondence relating to this, and I suppose you thought this paper was a response to my inquiry?

Mr. CLARK. Yes, sir.

Mr. DAY. I will ask you to produce all the correspondence you had with Mr. Grammer or any officer superior to yourself on the Lake Shore

and Michigan Southern road respecting the division of traffic or the diversion of it. This, I understand you to say, is a statement showing the percentage of traffic which under this agreement was to be allotted to the roads out of Chicago to the East?

Mr. CLARK. Yes, sir.

Mr. DAY. You have the original paper at your office and have sent for that?

Mr. CLARK. Yes, sir.

Mr. DAY. In the meantime I want to ask you another question or two, and will afterwards return to this subject. I would like you to explain, taking it up in detail, as if you were relating it to someone who knew nothing of the subject of reconsigning of the traffic, and I want you to state, if you can, every step that is taken with a bill of lading when traffic is reconsigned at these points.

Mr. CLARK. As far as the Lake Shore and Michigan Southern is concerned?

Mr. DAY. You may continue it to your own line.

Mr. CLARK. The traffic comes over the Lake Shore, consigned to New York. It is sold on the board of trade.

Mr. DAY. You say it comes over the Lake Shore?

Mr. CLARK. Yes, sir; consigned to New York.

Mr. DAY. Take the Mississippi River as the point of origin.

Mr. CLARK. We receive from the shipper new directions, giving the point to which he desires to have this traffic conveyed. These shipping directions are received at my office and transmitted to our local department and attached to the expense bill we receive from the Western railway. When the grain is transferred into the Eastern car this expense bill is returned to my office or one of the line offices for a bill of lading.

Mr. DAY. Who returns it to you?

Mr. CLARK. Our local department. This original expense bill that we receive from the Western road. We receive from the shipper of the grain the country bill of lading, the one issued from the point of issue, and we call it a tally—this expense bill; we issue a bill of lading and then return the expense bill back to our local department for filing. I think that about presents it.

Mr. DAY. You require the request of the shipper, you say, to reconsign?

Mr. CLARK. Yes, sir.

Mr. DAY. That is to say, you require the written request of the consignor or the owner of the bill of lading?

Mr. CLARK. The shipper—the one that ships the grain, that buys it on the board of trade. But this bill of lading is not delivered to him. It is delivered to the party bringing us the country bill.

Mr. DAY. Take an instance on your own line. We will just take the first case here, for example [pointing to statement filed with the answer of the Lake Shore and Michigan Southern Railroad]. Take this Harris traffic here, now. This traffic originated on the Mississippi River and came to the order, consigned to the order of J. F. Harris & Co., New York. Now, if Mr. Harris desired that to be reconsigned at Chicago—take that as an instance.

Mr. CLARK. That traffic was consigned through from the Mississippi River, and no action was taken in Chicago in reference to it.

Mr. DAY. I say, assuming that it had been, what would it have been necessary for Mr. Harris to have done, or the shipper?

Mr. Clark. He would have brought to me the original bill of lading

issued by the Chicago, Burlington and Quincy Railroad, and instructed me, if he desired it to go in another direction.

Mr. DAY. You require the written instructions of the owner of the traffic or the shipper of the traffic?

Mr. CLARK. We usually accept that from the shipper of the traffic.

Mr. DAY. The shipper here?

Mr. CLARK. Yes, sir.

Mr. DAY. But do not require any written order from the consignor—from the original shipper?

Mr. CLARK. No, sir.

Mr. DAY. It is the board of trade shipper?

Mr. CLARK. Yes, sir.

Mr. DAY. The man who purchased it on the board of trade?

Mr. CLARK. Yes, sir.

Mr. DAY. What evidence do you require him to show that he owns the traffic; or it may have been consigned from somebody else to somebody else?

Mr. CLARK. You see we do not return to him the bill of lading. It goes to the owner of the property. He, in turn, collects from the owner or shipper.

Mr. DAY. I do not think you understand me, or else I do not understand the practice right. I understand that you require the production of the bill of lading as evidence of the title in the party who asks for the reconsignment.

Mr. CLARK. We do not.

Mr. DAY. Well, if traffic is consigned by J. F. Harris & Co.—Mississippi River notify Lassier & Hooker, Chicago—the traffic is billed through to New York?

Mr. CLARK. We would accept from Lassier & Hooker directions to reconsign it, but would not deliver to them the bills of lading. We would deliver the bill of lading to Harris & Co.

Mr. DAY. Suppose Lassier & Co. had sold traffic here on the board of trade to Cable Jones, or Carrington, Hanna & Co., or Counselman?

Mr. CLARK. We would deliver the bill of lading to the party bringing the country bill of lading.

Mr. DAY. Do you require the order for reconsignment from the person whose name appears on the bill of lading or the way bill?

Mr. CLARK. We understand that traffic changes hands on the board of trade, and anyone coming into our office and says please consign such and such a car to destination, we would do that.

Mr. DAY. Without inquiring as to whether they had title or not?

Mr. CLARK. Yes, sir.

Mr. DAY. Then you make a reconsigning order and send it to the local agent?

Mr. CLARK. Yes, sir.

Mr. DAY. When he gets the car what does he do with this order?

Mr. CLARK. He writes in red ink across this expense bill the reconsigning order.

Mr. DAY. And returns that to you?

Mr. CLARK. That comes to us.

Mr. DAY. You issue a new bill of lading?

Mr. CLARK. Issue a new bill.

Mr. DAY. And surrender that bill to the party who gives up the original bill of lading?

Mr. CLARK. That is right.

Mr. DAY. Now, will you state to the commission how the purchaser on the board of trade buys that traffic. How is he informed what tariff pertains of the tariff charges for transportation up to Chicago?

Mr. CLARK. I do not think I can give every detail of the purchase and sale on the board. One of the gentlemen of the board could do that better.

Mr. DAY. You might give us your ideas, of course, subject to any correction. Give it to us as to how you understand the practice.

Mr. CLARK. The traffic is exhibited on the board in sample bags containing a small portion of the contents of the car, and the car number is written on this package and they offer it on the open market and the Eastern buyer makes his purchase and states to the receiver of this grain to what road he shall send it; and then this receiver gives the direction to the Western railroad to send it to the Eastern railroad to the party he sold it to.

Mr. DAY. Now, the buyer on the board of trade, the purchaser, the man whom you call now the shipper, who gets this grain, how does he know the amount of back charges against that grain?

Mr. CLARK. He knows nothing about it.

Mr. DAY. Here is a car of corn offered to him, say——

Mr. CLARK. I think they usually say—give him the style of the billing. It would say whether through billing or local billing—through billing meaning that it comes from beyond the Mississippi River.

Mr. DAY. And local billing from the Mississippi River up to Chicago?

Mr. CLARK. No; local billing would mean the local rate to Chicago.

Mr. DAY. From the point of origin of the traffic?

Mr. CLARK. Yes, sir.

Mr. DAY. And through billing?

Mr. CLARK. From the Mississippi River.

Mr. DAY. To the seaboard?

Mr. CLARK. To the seaboard.

Mr. DAY. Does that bear on its face the amount of charges that is due?

Mr. CLARK. There is nothing shown in the transaction on the board. They simply know——

Mr. DAY. Then he buys the grain at the Chicago market price, less the charges that are against it?

Mr. CLARK. The purchasers usually—they understand that the through-billed grain brings one price and the local billed another. I believe it is so stated among themselves.

Mr. DAY. Can you explain, Mr. Clark, to the commission what this charge means [indicating]?

Mr. CLARK. Yes, sir; this is a car of grain originating at Martinton, Ill., on the Chicago and Eastern Illinois Railroad. The car was sold to the O'Neill Grain and Elevator Company. The Chicago and Eastern Illinois turns that traffic over in Chicago to the Lake Shore and Michigan Southern Railroad. We transported that car to South Chicago, turning it over to the Elgin, Joliet and Eastern Railroad, and they in turn handed it to the elevator of the O'Neil Grain and Elevator Company. There appears to be a few dollars switching charges that was imposed by the Chicago and Eastern Illinois for some purpose. What, I could not say. The $5 charge, as mentioned there, is the charge that is allowed the Elgin, Joliet and Eastern Railroad for the transit of that grain from South Chicago over to the elevator and back again, they taking the two cars there, the Western car and an empty Eastern car, bringing back the two cars.

Mr. DAY. Was that charge paid?

Mr. CLARK. That charge is paid by the line leading from Chicago to the seaboard wherever the business is.

(The shipment referred to by Mr. Day occurred on March 9.)

Mr. DAY. Did your line pay that?

Mr. CLARK. Yes, sir.

Mr. DAY. Whom did you pay it to?

Mr. CLARK. The Elgin, Joliet and Eastern.

Mr. DAY. And these other instances here in this column—this explanation applies as to them?

Mr. CLARK. Yes, sir.

Mr. DAY. Have you received from your agent the original papers that we asked for?

Mr. CLARK. Yes, sir.

Mr. DAY. You might just state what that paper is. (Referring to paper in hands of witness.)

Mr. CLARK. This is the arbitrators' award in the division of east-bound traffic——

Mr. DAY. State how you received it, and when.

Mr. CLARK. It was received on November 6, 1896, from Cleveland, from Mr. G. J. Grammer's office.

Mr. DAY. Sent to you?

Mr. CLARK. Sent to me. The arbitrators' award in the division of east-bound traffic from Chicago and Chicago junction points, which come under the control of the Joint Traffic Association.

Mr. DAY. If your honors please, the paper relates to two subjects. One shows the division, the apportionment of traffic of dead freight, and the other of live stock, and the witness wants to know if he shall read the entire paper or only that portion relating to the grain.

The CHAIRMAN. They both relate to transportation matters, and one is as important as the other. Probably one of them is not directly on this subject, but we can start another investigation, if necessary.

Mr. CLARK (reading):

After due consideration of the arguments presented and the statistics of traffic forwarded in the past, the arbitrators' award is that east-bound shipments of live stock and dressed meats from Chicago and Chicago junctions, included in this reference, reduced to an equivalent of sixth-class tonnage basis, to be apportioned between the lines in interest from and after September 1, 1896, as follows:

	Per cent.
Baltimore and Ohio	4½
Cleveland, Cincinnati, Chicago and St. Louis Railway	1.1
Chicago and Erie Railway	9.4
Chicago and Grand Trunk Railway	13.2
Lake Shore and Michigan Southern	19.8
Michigan Central Railroad	16.1
New York, Chicago and St. Louis Railroad	11.3
Pittsburg, Cincinnati, Chicago and St. Louis Railway	10.7
Pittsburg, Fort Wayne and Chicago Railway	8.7
Wabash Railway	5.2
Total	100

And that the east-bound dead freight tonnage from Chicago and Chicago junctions, covered by this reference, reduced to an equivalent of sixth-class basis, be apportioned between the lines in interest from and after September 1, 1896, as follows:

	Per cent.
Baltimore and Ohio	8
Cleveland, Cincinnati, Chicago and St. Louis Railway	11.2
Chicago and Grand Trunk Railway	11
Lake Shore and Michigan Southern Railway	14.2
Michigan Central Railroad	13.6

	Per cent.
New York, Chicago and St. Louis Railroad	8.2
Pittsburg, Cincinnati, Chicago and St. Louis Railway	7
Pittsburg and Fort Wayne Railway	14.2
Wabash Railroad	6.6
Total	100

(Signed) J. F. GODDARD,
GARRETT A. HOBART,
E. F. LEONARD,
Arbitrators.

OCTOBER 30, 1896.

Mr. DAY. They are the arbitrators of the Joint Traffic Association?

Mr. CLARK. Yes, sir.

Mr. DAY. I understand you to say, Mr. Clark, that this telegram is the only communication that you received from Mr. Grammer in respect to the diversion of your tonnage to your competitor?

Mr. CLARK. Yes, sir.

Mr. DAY. And did you communicate with him—I will ask you that again; I forget your reply—what action you had taken?

Mr. CLARK. We usually gave him information from time to time showing how much tonnage we were doing in diverting the traffic and the total.

Mr. DAY. How did you do this?

Mr. CLARK. By wire.

Mr. DAY. Now, I asked you to bring this morning and state to the commission how much of your traffic you gave over to your competitors.

Mr. CLARK. Yes, sir.

Mr. DAY. During the first seventy-five days of this year?

Mr. CLARK. Yes, sir; we diverted to the Nickel Plate from February 26 and up to April 1, and during that time diverted to the Nickel Plate Railroad 364 cars, amounting to 12,466,140 pounds.

Mr. DAY. Twelve million?

Mr. CLARK. Yes, sir.

Mr. DAY. Did your road give up any of its tonnage to any other of its competitors during that period?

Mr. CLARK. No, sir.

Mr. DAY. Nothing whatever?

Mr. CLARK. Nothing whatever.

Mr. DAY. Did you have charge of all rebilling out of Chicago for traffic going East over the Lake Shore?

Mr. CLARK. Yes, sir.

Mr. DAY. This particular traffic that you turned over to the Nickel Plate was all described—has all been set out in this?

Mr. CLARK. In the statement?

Mr. DAY. Yes, sir.

Mr. CLARK. No, sir.

Mr. DAY. What portion of it was sent out?

Mr. CLARK. None of this traffic we diverted we included in that statement, as we had no billing of it. It will be shown in the Nickel Plate statement.

Mr. DAY. I think you stated yesterday where you turned it over to them?

Mr. CLARK. Yes, sir; at Englewood.

Mr. DAY. They gave you no billing of it? What receipt did they give you of the traffic, what acknowledgment?

Mr. CLARK. Their local agent would receipt to our local agent for the business.

Mr. DAY. You have those receipts?

Mr. CLARK. I could not say in just what form they are.

Mr. DAY. You have not seen them?

Mr. CLARK. No, sir.

Mr. DAY. You can just put out your initials in that, if that is a copy of the telegram.

Mr. CLARK. Just my initials?

Mr. DAY. Your name, just as you please, and the date.

Mr. CLARK. It is the 9th?

Mr. DAY. Yes, sir; and hand it to the stenographer.

(Hands it to the stenographer. The same is hereto annexed and marked Exhibit 1.)

Mr. DAY. Mr. Clark traffic which was presented to you for reconsignment—what evidence had you of the origin of that traffic before you reconsigned it or issued your order for reconsignment?

Mr. CLARK. We would not know much about it until this expense bill came to the office, or the bill of lading.

Mr. DAY. What evidence would you then have?

Mr. CLARK. This expense bill would show all the facts concerning the car—point of origin and every feature connected with it.

Mr. DAY. You have a rule which the Joint Traffic Association—the Joint Traffic Association has a rule, which you mentioned yesterday, limiting the time in which you were permitted to reconsign to seventy-two hours?

Mr. CLARK. Yes, sir.

Mr. DAY. Now, I observe in your answer here that traffic started from the Mississippi River as early as thirty days prior to its reconsignment here. How do you account for that?

Mr. CLARK. We might have been short of cars, or something of that kind.

Mr. DAY. You might have been short?

Mr. CLARK. Yes, sir.

Mr. DAY. You don't count the seventy-two hours if the grain is waiting for cars?

Mr. CLARK. We count it from the reconsignment of it. We get the reconsigning order, and we consider that that clears the traffic.

Mr. DAY. The waybill and bill of lading, then, may bear different dates?

Mr. CLARK. The bill of lading would be dated the same date as the billing.

Mr. DAY. The date of your waybill and the dating of the starting of the shipment from the Mississippi River; there seems to be thirty days intervening between the dates.

Mr. CLARK. There might have been a shortage of cars.

Mr. DAY. You waybill it before the car goes out?

Mr. CLARK. We don't waybill it until the property goes out.

Mr. DAY. The expense bill is the only evidence you have of the origin of the traffic when you reconsign the expense bill from another carrier?

Mr. CLARK. With the original bill of lading which is presented; that discloses it.

Mr. DAY. Would you reconsign to the Atlantic Seaboard traffic that came on over an Illinois road—from the West, we will say—that was billed to Chicago—destined Chicago—Chicago delivery—would you reconsign that through to the East on a through rate?

Mr. CLARK. With the consent of the Western railroad.

Mr. DAY. Would you, where it went to Chicago for local delivery—would you take out corn on the export rate with the consent of the Western road?

Mr. CLARK. Yes, sir.

Mr. DAY. Then in your practice you would change traffic, local traffic, to through?

Mr. CLARK. Yes, sir.

Mr. DAY. And local delivery to export?

Mr. CLARK. Yes, sir.

Mr. DAY. If it bore a local rate into Chicago of 10 cents a hundred and the export rate to the seaboard from point of origin was 15 cents a hundred, you would carry it through at that rate with the consent of the Western road?

Mr. CLARK. Yes, sir.

Mr. DAY. And if where the local rate into Chicago was 10 cents and the through rate from point of origin to New York was 20 cents you would change it from the local to the through at that rate?

Mr. CLARK. Yes, sir.

Mr. DAY. You taking your proportion of the through rate?

Mr. CLARK. Yes, sir.

Mr. DAY. What is the proportion of the Lake Shore haul on export traffic?

Mr. CLARK. You mean on this 15-cent basis?

Mr. DAY. Yes, sir.

Mr. CLARK. It would be, east of Chicago, 14.6.

Mr. DAY. That is through to the seaboard?

Mr. CLARK. Yes, sir; from Chicago, on a 15-cent basis, from east of the Mississippi River.

Mr. DAY. What would it be from Martinton, in Illinois, the instance I pointed out there where the rate was 16 cents—their export rate was 16 cents?

Mr. CLARK. Was that on a 15-cent basis? I can not just recollect.

Mr. DAY. I am asking you an abstract question. I just mentioned Martinton as an example.

Mr. CLARK. Points on the Chicago and Eastern Illinois Railroad taking Chicago rates?

Mr. DAY. Yes, sir.

Mr. CLARK. You desire to know what the revenue would be on that east of Chicago? That would be 12.6—would be the proper proportion east of Chicago.

The CHAIRMAN. You said that traffic that came to Chicago as local freight would be afterwards changed and given the through rate—either export or otherwise. Under what tariff do you do that?

Mr. CLARK. The published tariff from the Mississippi River. All of the Western railroads publish such tariffs.

The CHAIRMAN. You don't ship to Chicago under that tariff?

Mr. CLARK. No; he has reference to a local rate applying to Chicago. That would be a different tariff.

The CHAIRMAN. I understand what he has reference to; but you carry them under one tariff—under one arrangement or contract to Chicago?

Mr. CLARK. The Western railroads do.

The CHAIRMAN. And you join them if your arrangement afterwards carries it through, do you not?

Mr. CLARK. Yes, sir.

The CHAIRMAN. The arrangements you make afterwards show the through rate?

Mr. CLARK. Yes, sir.

The CHAIRMAN. Of course, your first arrangement don't, but you afterwards change it to show it?

Mr. CLARK. Yes, sir.

The CHAIRMAN. Under what tariff is that?

Mr. CLARK. That is the tariff from the Mississippi River.

The CHAIRMAN. The through tariff. That is the only one you have?

Mr. CLARK. That is the only one we have.

The CHAIRMAN. You ever consult your counsel as to whether you might do that?

Mr. CLARK. That has been the practice.

The CHAIRMAN. Your competitors join in that practice?

Mr. CLARK. I understand it is unusual. The traffic is usually through billing; never did much with the local.

Commissioner PROUTY. Does this tariff show anything about your right to stop over here this seventy-two hours?

Mr. CLARK. I think not.

Commissioner PROUTY. Or say anything about the right of reconsignment?

Mr. CLARK. I think not. That is an association rule.

The CHAIRMAN. What association rule?

Mr. CLARK. Our association under which all the railroads are governed here.

The CHAIRMAN. Has it some name? What is it?

Mr. CLARK. The Central Freight Association of Chicago.

The CHAIRMAN. Now, can you point out to us some provision—is that rule written down, on record?

Mr. CLARK. Yes, sir.

The CHAIRMAN. Will you be kind enough to get us that rule and put it in here, as part of your testimony, under which that was done?

Mr. CLARK. Yes, sir.

Commissioner PROUTY. That rule still in force?

Mr. CLARK. Yes, sir; it is in practice yet.

The CHAIRMAN. The association has gone by, but the things they did they continue to do; that it?

Mr. CLARK. Well, if you will just let me look at that, I will tell you in a moment if it is included there. [Looks at paper.] I made a little error in stating that the 15-cent rate went into effect January 15; it was January 20.

Commissioner PROUTY. Was that the rate from the Mississippi River to New York on export?

Mr. CLARK. Yes, sir.

Commissioner PROUTY. What condition of things existed at that time that required you to make a rate of 15 cents on export business from the Mississippi River?

Mr. CLARK. I understand that it was the competition via the Gulf ports. I think this covers that [referring to paper]: "When shippers request reconsignment, and the same is concurred in by the first carrier and those next to receive it, the authorized inspector shall sanction proper correction of the freight charges of both, so as to conform and maintain the established rates and divisions from original point of shipment or rate to such desired new destination."

Commissioner PROUTY. Where is that?

Mr. CLARK. This is in our testimony. It is filed as Exhibit B, annexed to our answer.

Mr. DAY. The Central Traffic Association. He files it as Exhibit B, I think, to his testimony; but that does not cite local delivery changed to export.

Mr. CLARK. There is no such grain. It is a through billing. You supposed the case, and I said on the consent of the Western railroads we might do this.

Commissioner PROUTY. Who is this inspector?

Mr. CLARK. Mr. Paul B. Rayner is the joint rate inspector.

Mr. PROUTY. By whom is he employed and paid?

Mr. CLARK. By the roads of the association.

Commissioner PROUTY. Of the Central Freight Association?

Mr. CLARK. And the Joint Traffic Association as well, I think.

Commissioner PROUTY. Does he have an office here in Chicago?

Mr. CLARK. Yes, sir.

Commissioner PROUTY. Employ a staff of clerks?

Mr. CLARK. Yes, sir.

The CHAIRMAN. In cases of investigation by the commission, Mr. Clark, about the very low rates from the grain districts west of Chicago East, it has been testified that the low rates were put in—low export rates were put in—as a necessity to meet the low rates from the Mississippi River to the seaboard East. Now, you state that your rates were put in to meet that other. Both of those things are true, I suppose—I mean those two statements stand together?

Mr. CLARK. I could not say about that. That was simply my opinion as to the reason for it, sir.

Commissioner PROUTY. Have you carried much grain on a foreign bill of lading, bound for some foreign ports?

Mr. CLARK. Carried some; we do during the winter months.

Commissioner PROUTY. That is made up of the export rate and the ocean rate.

Mr. CLARK. Yes, sir.

Commissioner PROUTY. Is the export rate under that sort of bill of lading always the same as the published export rate?

Mr. CLARK. Yes, sir.

Commissioner PROUTY. Who issues that bill of lading?

Mr. CLARK. It is issued in the office of the Red Line if via the Red Line.

Commissioner PROUTY. Has the Red Line Company a contract with some steamship line?

Mr. CLARK. They or the shipper has the ocean contract.

Commissioner PROUTY. They have the ocean contract before they make the rate?

Mr. CLARK. Before they make the bill of lading.

Mr. DAY. Where is the headquarters of the Red Line Association? Is it an association or a corporation?

Mr. CLARK. It is a cooperative line.

Mr. DAY. Where are the central offices of that concern?

Mr. CLARK. Buffalo.

Mr. DAY. Who is the head of it?

Mr. CLARK. Mr. Pomeroy is the general manager.

Mr. DAY. Who is the secretary?

Mr. CLARK. They have no secretary.

Mr. DAY. Have they an auditor?

Mr. CLARK. I don't think they have a person under that title. They have a staff to handle the business of that line.

Mr. DAY. What service does the Red Line perform in the transportation of grain to the seaboard?

Mr. CLARK. They solicit the traffic and the railroads take care of it. I guess that answers your question.

Mr. DAY. Is that all the service that they perform?

Mr. CLARK. They keep track of the business—look after it.

Mr. DAY. Do they load and unload cars?

Mr. CLARK. It is done by the railroads.

Mr. DAY. Do they do any cartage?

Mr. CLARK. No, sir.

Mr. DAY. Own any warehouses?

Mr. CLARK. No, sir.

Mr. DAY. Do they own any cars?

Mr. CLARK. No, sir.

Mr. DAY. Their chief business, then, is to solicit traffic for the railroads?

Mr. CLARK. Yes, sir.

Mr. DAY. Who employs them; who pays them—the employees of the Red Line, or the men who work for the Red Line?

Mr. CLARK. They are paid by the general manager.

Mr. DAY. By the general manager?

Mr. CLARK. The general manager of the Red Line pays the employees of the Red Line.

Mr. DAY. Who pays him; where does he get his revenue to pay them; from what source does he derive it?

Mr. CLARK. The railroads furnish that. I stated it was a cooperative line.

Mr. DAY. They are simply agencies of the railroads?

Mr. CLARK. Yes, sir.

Mr. DAY. What besides the Lake Shore, the New York Central, and the West Shore—what other rails does the Red Line operate over?

Mr. CLARK. I could not enumerate them. There are quite a number.

Mr. DAY. Have you the documents at your office showing that?

Mr. CLARK. Yes, sir.

Mr. DAY. Will you furnish them to the commission?

Mr. CLARK. Yes, sir. I will tell you one of the tariffs of the Red Line exhibits all the railroads in the line. They are on file with the commission. I will furnish you one of those tariffs.

Mr. DAY. You were going to give your proportion of your division of the rate from Chicago and eastern Illinois points which take the export rate to the seaboard?

Mr. CLARK. Yes, sir; I said that our proper proportion would be 12.6.

Mr. DAY. I thought that was from the Mississippi River.

Mr. CLARK. That was on a shipment originating at a hundred per cent rate point in Illinois, on the Chicago and Eastern Illinois Railroad.

Mr. DAY. 12.6?

Mr. CLARK. I gave you the export rate.

Mr. DAY. What was that?

Mr. CLARK. 14.6.

Mr. DAY. What would it be to Baltimore delivery?

Mr. CLARK. To Baltimore?

Mr. DAY. Yes, sir.

Mr. CLARK. We do little business with Baltimore. I don't keep in mind the divisions that accrue to the Eastern lines.

Mr. DAY. Could you give the Philadelphia?

Mr. CLARK. I think I could, from the Mississippi River.

Mr. DAY. No, sir; from the eastern Illinois points which take Chicago rates.

Mr. CLARK. 11.6 east of Chicago.

Mr. DAY. Mr. Clark, do you have any information of the instances of false billing?

Mr. CLARK. No, sir.

Mr. DAY. Or that the traffic was underweight?

Mr. CLARK. No, sir.

Mr. DAY. I mean through or intermediate.

Mr. CLARK. I have none; no, sir.

Mr. DAY. No information?

Mr. CLARK. No, sir.

Mr. DAY. Or of traffic alleged to have come from one line, whereas, in fact, it may have come from another to your road?

Mr. CLARK. No, sir.

Mr. DAY. Or to any other roads?

Mr. CLARK. No, sir.

Mr. DAY. In the instances that you have mentioned here of the double switching charge that you pointed out a few minutes ago, your road actually paid over that money?

Mr. CLARK. To the Elgin, Joliet and Eastern; yes, sir.

Mr. DAY. Have you any information that leads you to believe that that was diverted to any other purpose?

Mr. CLARK. I have not.

Mr. DAY. So far as your road was concerned, you regard it as a legitimate payment?

Mr. CLARK. I do.

Mr. DAY. What was the length of the haul?

Mr. CLARK. Well, I presume it is a mile and a half or two miles, something like that.

Mr. DAY. Isn't $5 a car a little heavy charge for a switch of that character, particularly where the traffic is large in volume?

Mr. CLARK. It is because the Elgin, Joliet and Eastern performs a switching service relieving us in the operation of the road of that much labor.

Mr. DAY. Yes; I asked you if that is not a pretty heavy charge for that service?

Mr. CLARK. Considering that they did all the work, I don't think it is.

Mr. DAY. What is the average switching charge made by other lines—the Belt Line, for example?

Mr. CLARK. It would have been $4.

Mr. DAY. The Chicago and Western Indiana? The president of that company testified here that the general charge made by his line was $1.50 for loaded cars.

Mr. CLARK. Well, you understand in the transportation of this grain traffic it requires the movement of two cars.

Mr. DAY. Well, that is to say, loaded and empty?

Mr. CLARK. Yes, sir.

Mr. DAY. And he charged 75 cents for the empty—that is, $2.25 for the service which you say you paid $5?

Mr. CLARK. That was an arrangement which I made myself.

Mr. DAY. With whom did you make it?

Mr. CLARK. With the Elgin, Joliet and Eastern Railway.

Mr. DAY. At whose instance?

Mr. CLARK. My own.

Mr. DAY. Who brought the subject up to your attention?

Mr. CLARK. I think I possibly may have consulted with the Elgin, Joliet and Eastern to see if they would do this work for us.

Mr. DAY. Who else did you consult?

Mr. CLARK. And arranged with the shipper for the traffic.

Mr. DAY. What shipper?

Mr. CLARK. The Chicago-O'Neil Grain Elevator Company.

Mr. DAY. Who did you make the arrangement with of that concern?

Mr. CLARK. Mr. Irwin. I believe it was Mr. Irwin.

Mr. DAY. Tell the commission what the substance of the conversation was that you had with Mr. Irwin respecting that.

Mr. CLARK. He asked if we could handle that grain for him, and I said that I would look into it and see if we could make such an arrangement. Then I visited the Elgin, Joliet and Eastern.

Mr. DAY. What arrangement did he propose—did he make?

Mr. CLARK. Simply to do their business.

Mr. DAY. Are you stating all that was said now—the conversation?

Mr. CLARK. There was nothing; it was if we could do the work.

Mr. DAY. Go on and state what was said.

Mr. CLARK. I then visited the Elgin, Joliet and Eastern and arranged for this price to be paid them to do all switching, relieving us of the labor. That is all there is of it.

Mr. DAY. Who was it made with on the Elgin, Joliet and Eastern?

Mr. CLARK. Mr. Banks.

Mr. DAY. Now, this was grain that was to go into the Chicago-O'Neil Grain Company's elevator?

Mr. CLARK. Yes, sir.

Mr. DAY. Does your company have anything to do with that elevator?

Mr. CLARK. No, sir.

Mr. DAY. Any interest in it?

Mr. CLARK. No, sir.

Mr. DAY. Is it on your rails?

Mr. CLARK. No, sir.

Mr. DAY. What rails?

Mr. CLARK. The Elgin, Joliet and Eastern, and the Belt Line as well.

Mr. DAY. And you arranged that the car should be taken from the rails of the Elgin, Joliet and Eastern?

Mr. CLARK. Arranged for the traffic to be taken from the rails of the Lake Shore by the Elgin, Joliet and Eastern, and taken to the elevator and brought back to us.

Mr. DAY. Brought back to you?

Mr. CLARK. Yes, sir.

Mr. DAY. Why was it taken that roundabout route? Are there any elevators on your rails to which it might be taken?

Mr. CLARK. The shipper had no other elevator.

Mr. DAY. I asked you if there were no other elevators on your rails that could be used for the purpose for which this grain was taken there. For what purpose was it taken to that company?

Mr. CLARK. I could not give you that information—the commercial feature of it.

Mr. DAY. Don't you have some notion?

Mr. CLARK. I suppose it was to rearrange the grade of it. If it was oats it was for clipping purposes.

Mr. DAY. Corn.

Mr. CLARK. I don't think there was any corn.
Mr. DAY. If corn, what then?
Mr. CLARK. If corn, possibly to rearrange the grade of it.
Mr. DAY. In whose cars was it loaded from that elevator?
Mr. CLARK. Outward bound?
Mr. DAY. Yes, sir; for the East.
Mr. CLARK. The Lake Shore cars.
Mr. DAY. Who placed your cars over there?
Mr. CLARK. The Elgin, Joliet and Eastern.
Mr. DAY. What allowance did you make to the Chicago-O'Neill Grain Company for the transferring of that grain?
Mr. CLARK. Have made none.
Mr. DAY. What did you agree upon?
Mr. CLARK. Nothing.
Mr. DAY. They got nothing for that service—the Chicago and Eastern Illinois—for the service of transferring from the Elgin, Joliet and Eastern car to your car?
Mr. CLARK. No, sir.
Mr. DAY. Is it not customary to make an allowance for transfer charges?
Mr. CLARK. It is if by agreement. I had no agreement to make an allowance with them.
Mr. DAY. Did they ask for an allowance?
Mr. CLARK. No, sir.
Mr. DAY. They didn't receive any?
Mr. CLARK. Have never received any.
Mr. DAY. Have an agreement that they shall receive any?
Mr. CLARK. No, sir.
Mr. DAY. And, so far as you know, they had not expectation of receiving any compensation for that service?
Mr. CLARK. I could not say as to what they expect.
Mr. DAY. I asked you so far as you know.
Mr. CLARK. As far as I know they don't; no, sir.
Mr. DAY. Has any claim ever been preferred?
Mr. CLARK. No, sir.
Mr. DAY. In the relation between the Lake Shore road and the Chicago-O'Neil Grain Company, who keeps the accounts between the two accounts on behalf of your company? Who do they deal directly with?
Mr. CLARK. The business is handled the same as all other traffic that is handled over the Lake Shore Railroad. It goes by this process that I recited to you. There are no special books kept.
Mr. DAY. In this instance the $7 charges were added to the freight charges; or were they taken out?
Mr. CLARK. They were taken out.
Mr. DAY. Then you sustained, so far as that traffic is concerned, a loss of the switching charges?
Mr. CLARK. Yes, sir.
Mr. DAY. Where did this $2 charge accrue?
Mr. CLARK. I could not say. I don't understand.
Mr. DAY. Was that imposed upon your company by the Chicago and Eastern Illinois?
Mr. CLARK. It might have been.
Mr. DAY. Was that for shunting the car off at this junction point with the Elgin, Joliet and Eastern at Chicago Heights?
Mr. CLARK. They deliver to us direct. We don't go to Chicago Heights.

Mr. DAY. That is an unusual charge, $2, is it not, on delivering from the Chicago and Eastern Illinois?

Mr. CLARK. I don't understand that special charge. It might have been delayed on the part of the Chicago and Eastern Illinois, and they charged on that, probably, $2. It is only an occasional charge.

Mr. DAY. It appears pretty often here. Here it is another time [referring to paper]. You can not give any explanation of it beyond what you stated?

Mr. CLARK. No. I think it was charged by the Chicago and Eastern Illinois Railway.

Mr. DAY. You paid it all to the Elgin, Joliet and Eastern—the $2?

Mr. CLARK. I could not say whether that was paid to the Chicago and Eastern Illinois or not.

Mr. DAY. They don't disclose it in their answer?

Mr. CLARK. No.

Mr. DAY. They seem to have answered pretty fully respecting the charges. I would like to have some explanation as to what it is, who paid it, and who got it. You say the $7 is taken out of your share of the haul and the through rate was not increased by reason of it?

Mr. CLARK. I don't understand what that $2 is for.

Mr. DAY. Have you any reason to believe that any portion of that was received by the Chicago O'Neil Grain Company?

Mr. CLARK. I am sure they did not.

Mr. DAY. What other rails reach this elevator in South Chicago?

Mr. CLARK. The Belt Line, I believe.

Mr. DAY. Which belt line do you refer to?

Mr. CLARK. The Chicago and Western Indiana.

Mr. DAY. What other rails?

Mr. CLARK. And the Elgin, Joliet and Eastern.

Mr. DAY. And some railroad in addition to that?

Mr. CLARK. Possibly the Rock Island may.

Mr. DAY. Does the Chicago, Hammond and Western touch it?

Mr. CLARK. I think not.

Mr. DAY. You do have physical connection with the Belt Line?

Mr. CLARK. Yes, sir.

Mr. DAY. Did you try to make arrangements with any of the other belt lines to take this traffic for you?

Mr. CLARK. No, sir; as I stated, the Elgin, Joliet and Eastern performed the switching part of the arrangement.

Mr. DAY. You admit that you are paid a higher price than the market. Now, I ask you if you made any effort to have this switching done at the market rate? I want to know, in other words, why you paid more than the market price for that service.

Mr. CLARK. Simply because they performed the work that would have had to been done by our own engine. That was the reason.

Mr. DAY. You made no effort to get the Western Indiana to do the same work? They would do it, would they not? They are engaged in that service?

Mr. CLARK. I made no effort to see them in reference to it.

Mr. DAY. Have you stated to the commission now all that you know or have reason to believe respecting that transaction?

Mr. CLARK. I have.

Mr. DAY. The traffic is large in volume. What other lines beside the Red Line participated in this traffic mentioned in your answer? What other fast freight lines?

Mr. CLARK. The West Shore, the Lake Shore, the Lehigh Valley Route, and the Empire Line.

Mr. DAY. Who is the agent for the West Shore Line?

Mr. CLARK. Mr. G. G. Goble.

Mr. DAY. Is he under your jurisdiction?

Mr. CLARK. Yes, sir.

Mr. DAY. And the agent of the Lehigh Valley, what is his name?

Mr. CLARK. J. H. Lucas.

Mr. DAY. And is he under your supervision?

Mr. CLARK. Yes, sir.

Mr. DAY. A subordinate of yours?

Mr. CLARK. Yes, sir.

Mr. DAY. The Empire Line, also?

Mr. CLARK. And Joseph Stockton, also.

Mr. DAY. That is all I desire to ask Mr. Clark at this time, your honors.

The CHAIRMAN. Is Mr. Burnett in the room, or somebody representing the Wabash?

Interstate Commerce Commission, Exhibit No. 1, grain case—Testimony of J. L. Clark.

[Copy telegram.]

CLEVELAND, *February 25, 1897—12.45 p. m.*

J. L. CLARK:

Be sure to see that our tonnage is reduced. If it is necessary to send Red Line or Lehigh Valley tonnage over Nickel Plate in order to reduce our excess you can do so, but before doing it you must arrange with the Nickel Plate to deliver Red Line business to New York Central and Lehigh Valley business to Lehigh Valley at Buffalo. I am very anxious that our current business will show a reduction at once.

G. J. GRAMMER.

Commenced diverting to Nickel Plate February 26, and ended April 1, and during that time diverted to Nickel Plate 364 cars—12,466,140 pounds.

L. BRIGGS, having been duly sworn, testified as follows:

Mr. DAY. What is your position? What is your occupation?

Mr. BRIGGS. Commercial agent of the New York, Chicago and St. Louis Railroad.

Mr. DAY. Stationed at Chicago?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Who is your official superior, next?

Mr. BRIGGS. The general freight agent.

Mr. DAY. What is his name?

Mr. BRIGGS. George B. Spriggs.

Mr. DAY. What is his residence?

Mr. BRIGGS. Cleveland, Ohio.

Mr. DAY. Is he in town?

Mr. BRIGGS. No, sir.

Mr. DAY. Do you have exclusive charge of the business of the New York, Chicago and St. Louis Railroad here?

Mr. BRIGGS. Under his jurisdiction.

Mr. DAY. I mean to say that you are the superior officer here at this point?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Who are your assistants in the work here?

Mr. BRIGGS. Well, I have a staff of clerks, traveling agents, and a contracting agent.

Mr. DAY. Who are your traveling agents?

Mr. BRIGGS. I. F. Crawford and C. V. Mussin.

Mr. DAY. Where do they reside?

Mr. BRIGGS. In Chicago.

Mr. DAY. Can you give their addresses?

Mr. BRIGGS. I do not know them.

Mr. DAY. Their headquarters are at your office?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Where is your office located?

Mr. BRIGGS. Six and 8 Pacific avenue.

Mr. DAY. Who is your contracting agent?

Mr. BRIGGS. R. T. Davney.

Mr. DAY. What is his address?

Mr. BRIGGS. Park Manor, I think. I am not sure.

Mr. DAY. His headquarters are at your office?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Have you named all the assistants who are engaged in the soliciting of traffic, or contracting for traffic, or making arrangements with shippers respecting transportation over your line or any other line?

Mr. BRIGGS. I have for the New York, Chicago and St. Louis.

Mr. DAY. What fast freight lines operate over your road?

Mr. BRIGGS. The Lackawanna line, the Traders' Dispatch, the Nickle Plate fast freight line, and the Interstate Dispatch from Chicago.

Mr. DAY. What service do these fast freight lines perform in respect to this traffic?

Mr. BRIGGS. They furnish through cars, ostensibly; that is about the principal object of the fast freight.

Mr. DAY. Do they have an equipment of their own that they furnish?

Mr. BRIGGS. Yes, sir.

Mr. DAY. The traffic that they contract for—is that carried exclusively in their own cars or do they simply provide cars?

Mr. BRIGGS. Well, it might be carried in the cars or in our own company's cars, as the case may be. For instance, business generally going by the Traders' Dispatch would be in a Lehigh Valley car or a Traders' Dispatch car.

Mr. DAY. Do the agents of these lines that you have mentioned have power to contract for traffic?

Mr. BRIGGS. They have power to solicit traffic the same as I do.

Mr. DAY. When they secure a shipment—for example, a large shipment of grain—do they report that to you or do they make the contract?

Mr. BRIGGS. I do not know what you mean by contract. I usually handle the business myself.

Mr. DAY. I mean speaking of grain and the products of grain.

Mr. BRIGGS. I usually handle it myself.

Mr. DAY. Have they handled it at all since January 1?

Mr. BRIGGS. They are on the board of trade soliciting grain the same as I am.

Mr. DAY. They have the power to issue bills of lading?

Mr. BRIGGS. Yes, sir; on the Traders' Dispatch, the Lackawanna,

the agent of that line would issue the bill of lading. The bills of lading that I issue would be simply New York, Chicago and St. Louis local points.

Mr. DAY. If they make a contract for a shipment of grain, do they make a report to you about that where it passes over the rails of the Nickel Plate?

Mr. BRIGGS. The grain may be coming every day in a few cars. There may be ten to-day and fifteen to-morrow, and so on. They get lots of cars that we do not know anything about. They do not report all the shipments that come.

Mr. DAY. They do not report all the shipments that go over your rails. What I am trying to get at is, whether they act quite independently of you so far as transportation over your line is concerned.

Mr. BRIGGS. They are under my jurisdiction to a certain extent.

Mr. DAY. When they make a contract, state what they do.

Mr. BRIGGS. What do you mean by a contract?

Mr. DAY. Well, a shipment of grain, or grain products. Say that Carrington & Hanna Co. wanted to transport to Chicago or deliver to your rails, without reference to where it comes from, a consignment of grain to New York.

Mr. BRIGGS. I take it that that would come billed from the original Western point. It might be billed to some Chicago firm, billed to New York; notify this firm in Chicago. If a firm would sell on the board of trade to Carrington & Hanna, the grain being already in our yard, it is ordered to some Eastern point: Carrington & Hanna would give directions to New York or Boston, for instance. If it was a Lackawanna point, it would go by that line, and they would issue the bill of lading; if by the Traders' Dispatch, that agent would issue the bill of lading.

Mr. DAY. Suppose you select the Traders' Dispatch; who is the man that represents that line?

Mr. BRIGGS. N. A. Skinner.

Mr. DAY. They do not run over your line?

Mr. BRIGGS. Yes, sir.

Mr. DAY. If Mr. Skinner secured the traffic from Carrington & Hanna, and if it was routed over the Traders' Dispatch, does Mr. Skinner make a report to you of that fact?

Mr. BRIGGS. He does not have to, because I have the waybills in my office.

Mr. DAY. In that transaction is he acting as a subordinate of yours?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Does he make any different rate than what you make on the traffic?

Mr. BRIGGS. He does not.

Mr. DAY. What advantage could there be to Carrington & Hanna—what advantage to the shipper would there be in his giving to your office and accepting the Traders' Dispatch, rather than turning it over to you to bill directly?

Mr. BRIGGS. So far as Carrington & Hanna are concerned they do not care how it goes. They might want it to go to Lehigh Valley delivery. It is the line billing that takes it to destination. If the car was going to New England it might be a point reached by the Lackawanna or Interstate Dispatch, and we would have to give it to the one making that delivery.

Mr. DAY. When the charges are collected on that traffic are they ever prepaid on this through traffic on grain?

Mr. BRIGGS. I have never known a case where the shipment of grain was prepaid unless it was a station where there is no agent, where it has to be prepaid.

Mr. DAY. Well, say out of Chicago?

Mr. BRIGGS. Out of Chicago to a point on our road where there is no station agent.

Mr. DAY. The charges usually follow the traffic?

Mr. BRIGGS. Yes, sir.

Mr. DAY. When it is billed by the Traders' Dispatch the traffic is turned over to your road to start with?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Does your company get all the earnings for the haul over your rails?

Mr. BRIGGS. Yes, sir; we do.

Mr. DAY. No portion of it goes to the Traders' Dispatch concern?

Mr. BRIGGS. It does not.

Mr. DAY. You collect from the carrier to whom you deliver the charges up to that point?

Mr. BRIGGS. We collect of the connecting carrier our charges, and they of the consignee.

Mr. DAY. So that no money passes between your road and the Traders' Dispatch for this service?

Mr. BRIGGS. No, sir.

Mr. DAY. Who supports the Traders' Dispatch? Is that agency sustained by the road forming the Traders' Dispatch line?

Mr. BRIGGS. Yes, sir.

Mr. DAY. It is simply an auxiliary to the regular railroad line?

Mr. BRIGGS. Yes, sir.

Mr. DAY. The work of the regular railroad agent?

Mr. BRIGGS. Yes, sir.

Mr. DAY. You are not a line agent, as I understand?

Mr. BRIGGS. I am not.

Mr. DAY. You are the agent for the railroad itself—the Nickel Plate road—and you have supervision over the work of these auxiliary lines?

Mr. BRIGGS. Yes, sir; their representative at Chicago, of these lines.

Mr. DAY. So that in fact these people you have mentioned that have their offices in your office and who are your subordinates can not give to the shipper any different service from what you could do. You could do exactly for them what these other men do?

Mr. BRIGGS. Well, if I understand you, I could say to a shipper of grain—I could solicit his business for the Traders' Dispatch or the Lackawanna.

Mr. DAY. You could say to Carrington & Hanna—I use their name because I see it here—you could say to them, if they wanted the Traders' Dispatch, "I can bill for you over the same road and deliver at the same identical point as if you got the billing from them." Is not that true?

Mr. BRIGGS. Yes, sir.

Mr. DAY. I only want to get at the practice. Then you could give them every advantage that the other people could?

Mr. BRIGGS. Yes, sir; that the line agent could.

Mr. DAY. What necessity is there for the sustaining of these line agencies here?

Mr. BRIGGS. I do not know. Of course, the fast freight line, as a line, is represented not only in Chicago, but all over the country, in all large cities, soliciting business for its line. I suppose that is the necessity of it; more solicitation, more agents.

Mr. DAY. At Chicago they do not do anything that you do not do or could not do if they were not here? You are capable of doing all their work, and you do?

Mr. BRIGGS. No, sir; I say that I could do anything in a specific case, but I have not the ability to cover this territory that four men do, or see as many shippers.

Mr. DAY. Well, if you had those men employed directly by the Nickel Plate line you could do that work?

Mr. BRIGGS. I presume so.

Mr. DAY. I am trying to ascertain what is the value, what additional value, the fast freight line renders to the traffic that you can not give yourself, at this point.

Commissioner PROUTY. Do not all the roads that compose this line contribute to the expense of maintaining the line?

Mr. BRIGGS. I am not positive; that is my impression.

Commissioner PROUTY. Do not you understand that the line is organized so that all the roads will contribute to the expense of getting it?

Mr. BRIGGS. I do not know how they were organized.

Commissioner PROUTY. If the Nickel Plate road solicited traffic at Chicago, and it was not solicited by the line, you would be to the entire expense of soliciting it; whereas if the line solicits it the expense is borne by the different roads that participate in the line?

Mr. BRIGGS. It is my impression that the expenses are prorated on the basis of earnings of each road.

Commissioner PROUTY. Is that true of the Nickel Plate expenses?

Mr. BRIGGS. I mean the expenses of the line agents?

Commissioner PROUTY. Mr. Day asked you why you organized that line?

Mr. BRIGGS. I did not organize it, and do not know why it was organized. It was before my time.

Mr. DAY. Did you participate in the making up of this report?

Mr. BRIGGS. No, sir.

Mr. DAY. Did you have anything to do with it?

Mr. BRIGGS. No, sir.

Mr. DAY. You were not consulted?

Mr. BRIGGS. No, sir.

Mr. DAY. Did you ever see it?

Mr. BRIGGS. No, sir.

Mr. DAY. Or the answer?

Mr. BRIGGS. No, sir.

Commissioner PROUTY. What is this witness's connection with the Nickel Plate road?

Mr. BRIGGS. I am the commercial agent. That is my title.

Commissioner PROUTY. What does that mean?

Mr. BRIGGS. It means that I am in charge of the commercial affairs of the Nickel Plate road in Chicago,

Commissioner PROUTY. Not their general freight agent or assistant general freight agent?

Mr. BRIGGS. We have a general freight agent at Cleveland, but no assistant.

Commissioner PROUTY. Your business is to look after this freight and get it?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Do you deal with traffic that comes from Western roads and is billed through, and traffic delivered locally here, both for the Atlantic Seaboard points and intermediate points?

Mr. BRIGGS. Yes, sir.

Mr. DAY. You do not exclude traffic that is not within the trunk-line territory?

Mr. BRIGGS. We do not exclude anything.

Mr. DAY. You take everything that comes?

Mr. BRIGGS. Everything.

Mr. DAY. Is there any agent of the Nickel Plate here in Chicago that is able to explain the report of your road?

Mr. BRIGGS. That report is made up by our local agent, from the records in his office.

Mr. DAY. What is his name?

Mr. BRIGGS. J. L. Lockwood.

Mr. DAY. Is Mr. Lockwood subject to your jurisdiction; does your jurisdiction cover his office?

Mr. BRIGGS. Well, to a certain extent; but generally he is under the jurisdiction of the general freight agent. Of course, if I ask Mr. Lockwood to do anything——

Mr. DAY. In the way of making up a report, he would do it?

Mr. BRIGGS. Yes, sir; he would.

Mr. DAY. In the division of traffic on the roads in this territory, do you have anything at all to do with seeing to it that your road gets its share?

Mr. BRIGGS. I have never been officially advised of any such agreement.

Mr. DAY. I am not asking you about any agreement.

Mr. BRIGGS. Getting our share under the division of tonnage?

Mr. DAY. I asked you, in the division of the traffic, whether you had anything to do with securing your road its share?

Mr. BRIGGS. What do you mean by "the division of the traffic?"

Mr. DAY. Well, you know what I mean. I did not mention any agreement. I asked if it was part of your duty or came within your work to see that your road got its share of the traffic?

Mr. BRIGGS. I am instructed to get all I can legitimately.

Mr. DAY. Have you had anything to do with getting traffic from other roads—competing lines?

Mr. BRIGGS. No, sir.

Mr. DAY. You have had no correspondence in relation to it?

Mr. BRIGGS. No, sir.

Mr. DAY. Have you had any supervision of the traffic delivered from other points to your road?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Other competing roads?

Mr. BRIGGS. Yes, sir.

Mr. DAY. In the past four or five months, tell the commission what you have had to do in respect to that?

Mr. BRIGGS. I do not know that I have had anything special to do with it?

Mr. DAY. Have you had any personal supervision of traffic delivered to your road from competing roads like the Lake Shore, the Baltimore and Ohio, the Michigan Central, the Big Four, and the Wabash?

Mr. BRIGGS. I do not know of any jurisdiction that would be necessary if the traffic was——

Mr. DAY. I am asking you if you had anything to do with the delivery of the traffic to your road?

Mr. BRIGGS. No, sir.

Mr. DAY. Do you know whether any has been delivered to your road?

Mr. BRIGGS. Yes, sir.

Mr. DAY. From what road?
Mr. BRIGGS. The Lake Shore.
Mr. DAY. What other road?
Mr. BRIGGS. I think the Baltimore and Ohio.
Mr. DAY. What other?
Mr. BRIGGS. I do not know of any other.
Mr. DAY. When was the Lake Shore traffic delivered to your road?
Mr. BRIGGS. I do not remember.
Mr. DAY. About when?
Mr. BRIGGS. About February or March.
Mr. DAY. When was the Baltimore and Ohio?
Mr. BRIGGS. About the same time, I think.
Mr. DAY. Was there any considerable quantity of it?
Mr. BRIGGS. Yes, sir. You probably have it in those sheets, if they are correctly compiled.
Mr. DAY. How did you acquire the information that it had been delivered?
Mr. BRIGGS. From the record of waybills in our office.
Mr. DAY. Did the waybills of that office pass through your office?
Mr. BRIGGS. Yes, sir.
Mr. DAY. And through the office of the local agent?
Mr. BRIGGS. Yes, sir; I get a tissue copy. He keeps one there, and sends one to my office of all traffic billed.
Mr. DAY. Do you have any information other than what you procure from your local agent by this tissue copy?
Mr. BRIGGS. No, sir. The only other information had—I might say, the Lake Shore stated to me that they would turn us over some traffic, and the Baltimore and Ohio stated the same thing.
Mr. DAY. Who stated it for the Lake Shore?
Mr. BRIGGS. Mr. Clark.
Mr. DAY. And who for the Baltimore and Ohio?
Mr. BRIGGS. Mr. Bigelow.
Mr. DAY. What else did Mr. Bigelow say?
Mr. BRIGGS. I can not recollect anything further.
Mr. DAY. What provoked that remark; what led up to it?
Mr. BRIGGS. Nothing; he simply met me and said that he would give us some traffic.
Mr. DAY. What did you say?
Mr. BRIGGS. I said that I would be very glad to receive it.
Mr. DAY. Had you had a conversation of that kind before with him on any previous occasion?
Mr. BRIGGS. No, sir.
Mr. DAY. That was the first time you had any conversation with Mr. Bigelow about getting traffic from his road?
Mr. BRIGGS. As I recollect; yes, sir.
Mr. DAY. Is that all he said? Was there not something that induced that conversation?
M. BRIGGS. No, sir.
Mr. DAY. Some complaint that you were not getting all you ought to have?
Mr. BRIGGS. I did not solicit it from either of them.
Mr. DAY. Did you make any complaint that you were not getting your share for your road?
Mr. BRIGGS. No, sir; I did not.
Mr. DAY. You did not make complaint?
Mr. BRIGGS. I did not.

Mr. DAY. Did anybody connected with your road, that you know of, complain that you were not getting your share?

Mr BRIGGS. They did not.

Mr. DAY. You did not receive some communication from Mr. Spriggs—some complaint that you were not getting out of Chicago the amount of traffic that your road was entitled to?

Mr. BRIGGS. I did not.

Mr. DAY. None whatever?

Mr. BRIGGS. None that I recall. I have outlined the conversation as I understood it.

Mr. DAY. Yes; I understand you to say that you stated substantially what occurred between you and Mr. Bigelow. Where did you meet him?

Mr. BRIGGS. I think on the corner of Jackson street and Pacific avenue.

Mr. DAY. And he made the remark that he would give you some traffic?

Mr. BRIGGS. Yes, sir.

Mr. DAY. And you said you would be glad to have it?

Mr. BRIGGS. Yes, sir; I said I would be very glad to have it.

Mr. DAY. How much was it, approximately?

Mr. BRIGGS. I do not remember; I have not the details or figures.

Mr. DAY. Did you exercise any discretion as to how it should be routed?

Mr. BRIGGS. None whatever.

Mr. DAY. Who did that?

Mr. BRIGGS. The traffic was delivered to us at our rails at Stony Island, and our agent took care of it in the usual way.

Mr. DAY. Do your rails connect with the Baltimore and Ohio at Stony Island?

Mr. BRIGGS. Yes, sir.

Mr. DAY. They shunted the traffic from one line to the other?

Mr. BRIGGS. Yes, sir; they have a Y there.

Mr. DAY. And you took it off there?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Did you give directions to your agent to take it off?

Mr. BRIGGS. I did.

Mr. DAY. How; by letter?

Mr. BRIGGS. Over the telephone.

Mr. DAY. What did you say to him?

Mr. BRIGGS. I told him that the Baltimore and Ohio was going to give us some traffic, and to look out for it.

Mr. DAY. Did you have any documentary evidence from the Baltimore and Ohio?

Mr. BRIGGS. None whatever.

Mr. DAY. How could you tell what the traffic was, where it was to go?

Mr. BRIGGS. The Baltimore and Ohio undoubtedly supplied our local agent with the instructions where to bill it to.

Mr. DAY. You did not know anything about that?

Mr. BRIGGS. No, sir.

Mr. DAY. What did you say his name was?

Mr. BRIGGS. J. L. Lockwood.

Mr. DAY. Will you ask him to come here this afternoon?

Mr. BRIGGS. He is in Washington, attending a convention of local agents.

Mr. DAY. When do you expect him back?

Mr. BRIGGS. I presume next week.

Mr. DAY. What became of this traffic? Where was it turned over to the connecting carrier?

Mr. BRIGGS. By us, East?

Mr. DAY. Yes, sir.

Mr. BRIGGS. To the Pittsburg and Western at Painesville.

Mr. DAY. That is the Baltimore and Ohio?

Mr. BRIGGS. Practically; yes, sir.

Mr. DAY. How far east of here is Painesville?

Mr. BRIGGS. I could not say exactly.

Mr. DAY. Well, approximately?

Mr. BRIGGS. Well, it is east of Cleveland. You know how far that is?

Mr. DAY. What is your portion of the haul, of the earnings for that traffic?

Mr. BRIGGS. I do not remember.

Mr. DAY. You have the evidence in your office of the rates at which it is carried?

Mr. BRIGGS. Yes, sir.

Mr. DAY. You have the evidence?

Mr. BRIGGS. Yes, sir; we have the way bills.

Mr. DAY. You collected the money for your share of the transportation?

Mr. BRIGGS. From the Pittsburg and Western.

Mr. DAY. They advance the charges?

Mr. BRIGGS. They always do; that is customary.

Mr. DAY. Will you present to the commission a statement of the amount you received—which your road received—from the Pittsburg and Western road for that particular traffic?

Mr. BRIGGS. You mean the entire amount of the traffic?

Mr. DAY. Yes, sir; the entire amount of the traffic. The rate at which it was carried, your portion, and the total sum you received.

Mr. BRIGGS. That will take a long time to make that statement.

Mr. DAY. Why will it take a long time?

Mr. BRIGGS. Because we have to search all through our records to get it. I can give you the divisions of earnings.

Mr. DAY. Well, give the divisions of earnings and the rate.

Mr. BRIGGS. You understand there were different commodities; it was not all one commodity; and the rates, too, vary.

Mr. DAY. What was there besides grain?

Mr. BRIGGS. I think there was some fertilizer.

Mr. DAY. What else?

Mr. BRIGGS. I can not tell you—various articles.

Mr. DAY. Well, you can make a statement to the commission.

Mr. BRIGGS. I can tell the commodities, the rate, and the division of earnings.

Mr. DAY. The commodities carried, the weight, the rate, and the division?

Mr. BRIGGS. I will have to go to all our records. I can give in a general way the commodities carried, the rate on that traffic, and the division of the rate.

Mr. DAY. If you will give the commission the number of cars, if it is difficult to make up the weight. Mr. Clark found no difficulty in making up the weight.

Mr. BRIGGS. I can give you the number of cars, the different commodities, the rate on each commodity, and the division.

Mr. DAY. And you will be prepared to state whether the rate charged

by you—the division which you report to the commission—was actually collected from the Pittsburg and Western?

Mr. BRIGGS. Yes, sir; I state that now.

Mr. DAY. A part of this traffic that was turned over to you by the Baltimore and Ohio. The Baltimore and Ohio Railroad appears to be the consignor, the owner of the traffic, the shipper?

Mr. BRIGGS. They do not own any. So far as we are concerned, they are the consignors.

Mr. DAY. They do not appear to be the consignor, excepting for a very small part of it. The great bulk of it—the consignor is stated in all cases. A few cars are stated here to be the Baltimore and Ohio Railroad as the consignor, and Gill & Fisher consignee. How do you know the Baltimore and Ohio does not own that?

Mr. BRIGGS. The Baltimore and Ohio does not own any grain.

Mr. DAY. What leads you to that belief?

Mr. BRIGGS. I do not know any railroad that owns any grain.

Mr. DAY. You just suppose that, and therefore you make that statement?

Mr. BRIGGS. I could not say positively, because I do not know. But I do not suppose any railroad owns any grain.

Mr. DAY. Did your road receive any traffic from the Michigan Central?

Mr. BRIGGS. I do not recall any.

Mr. DAY. How about the Wabash?

Mr. BRIGGS. I do not recall any from the Wabash.

Mr. DAY. Or the Big Four?

Mr. BRIGGS. Nor the Big Four.

Mr. DAY. Nor the Grand Trunk?

Mr. BRIGGS. Nor the Grand Trunk.

Mr. DAY. Nor the Pennsylvania?

Mr. BRIGGS. Nor the Pennsylvania.

Mr. DAY. Does your company own or control any elevators in Chicago or at Chicago junction points?

Mr. BRIGGS. Yes, sir. We have an elevator located on our tracks at Stony Island.

Mr. DAY. Who operates that?

Mr. BRIGGS. Harry G. Chase.

Mr. DAY. What do you pay him for transfer charges?

Mr. BRIGGS. I do not pass upon the vouchers and I could not say definitely, but it is my understanding that he receives $1.50 on oats and $1 on all other grain.

Mr. DAY. Who does pass upon his vouchers?

Mr. BRIGGS. I do not know.

Mr. DAY. Have you no information as to what officer of your company passes on his claim for transfer charges?

Mr. BRIGGS. I presume that it passes through the general freight office, but do not know positively, and can not say.

Mr. DAY. You do not approve them?

Mr. BRIGGS. No, sir.

Mr. DAY. You do not make any inspection of them?

Mr. BRIGGS. No, sir.

Mr. DAY. They do not come through your office?

Mr. BRIGGS. No, sir.

Mr. DAY. He forwards them direct to the general freight agent at Cleveland?

Mr. BRIGGS. I do not know to whom he forwards them, but I presume he does inform him of any inquiries as to that

Mr. DAY. What he receives you do not know, you say, of your own knowledge?

Mr. BRIGGS. I am of the opinion that he receives $1.50 on oats, and $1 on all other grain.

Mr. DAY. At Painesville, Ohio, your rails connect with the Pittsburg and Western?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Where is Calumet Elevator A?

Mr. BRIGGS. Calumet Elevator A is on the Elgin, Joliet and Eastern, and the Belt, at South Chicago.

Mr. DAY. How many elevators are there at South Chicago that are accessible to your rails?

Mr. BRIGGS. I think all of them; they are not on our rails, but are accessible to us.

Mr. DAY. This traffic which was turned over to you by the Baltimore and Ohio, did you furnish the cars for that traffic?

Mr. BRIGGS. We did not.

Mr. DAY. Whose cars did that traffic go forward in?

Mr. BRIGGS. The Baltimore and Ohio cars.

Mr. DAY. Does any fast freight line operate over your line and the Baltimore and Ohio?

Mr. BRIGGS. No, sir.

Mr. DAY. What fast freight line operates over the Baltimore and Ohio?

Mr. BRIGGS. None. The Continental Line out of St. Louis, I guess. I do not know whether they operate out of Chicago or not; I think they have none. Oh, yes, there is the Central States Dispatch, which operates over the Baltimore and Ohio out of Chicago.

Mr. DAY. You think this traffic was forwarded in Baltimore and Ohio cars?

Mr. BRIGGS. I am quite sure of it.

Mr. DAY. What leads you to think that?

Mr. BRIGGS. Because in looking over the waybills at that time, my recollection is that it all appeared to be in the Baltimore and Ohio cars. We certainly would not furnish cars for it.

Mr. DAY. I would like to know whether any of it was carried forward in the cars of the Traders' Dispatch?

Mr. BRIGGS. Well, I can not say. I do not think there was any of it.

Mr. DAY. Have you any means of ascertaining?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Will you ascertain that and report to the commission whether any of it was carried forward in the Traders Dispatch cars?

Mr. BRIGGS. I could say now definitely that there were only a few cars, one or two cars that the Baltimore and Ohio might have on its line and pick up and send this grain in those cars. But we did not give a single car to the Baltimore and Ohio to load that traffic.

Mr. DAY. In your answer, you refer to L. L. Does that mean the Lackawanna line?

Mr. BRIGGS. Yes, sir. Is my answer to your previous question sufficient without my going over the records? I say that we did not give a single empty car to the Baltimore and Ohio to load that grain and there were only a few probably of the Traders Dispatch.

Mr. DAY. They did not have anything to do with the transfer?

Mr. BRIGGS. They brought the cars that they picked up on their own rails to us and did not make any requisition on us for empties. If they had, they would not have gotten any.

Mr. DAY. Why not?

Mr. BRIGGS. Because we had use for all of our own empties at that time.

Mr. DAY. Why would not you in taking traffic for them furnish them with cars for the traffic the same as any other shipper?

Mr. BRIGGS. We did not have the cars to spare.

Mr. DAY. Would you have had cars to provide for other people, if they wanted to ship?

Mr. BRIGGS. That is the reason we would not furnish them to the Baltimore and Ohio.

Mr. DAY. Suppose Carrington, Hanna & Co. wanted to ship?

Mr. BRIGGS. That is the reason we would not supply them to the Baltimore and Ohio. We would not supply them if they wanted to load on the Baltimore and Ohio. If they wanted to load on our rails we would At that time we were short of empties and could not afford to give the Baltimore and Ohio empties. If we had had the empties we would have been glad to supply them.

Mr. DAY. Do you bill through to the United Kingdom, say, to London or Liverpool?

Mr. BRIGGS. We do not.

Mr. DAY. But your line agents bil' through?

Mr. BRIGGS. They do not.

Mr. DAY. On traffic that is billed for export, that is, billed through, going over the Traders' Dispatch or the Lackawanna, or any of the lines operating over the Nickel Plate, who issues the bill of lading?

Mr. BRIGGS. The agent of that line.

Mr. DAY. Of that line? Does he issue in any instance a bill of lading beyond the seaboard?

Mr. BRIGGS. He does.

Mr. DAY. In what instance?

Mr. BRIGGS. In any instance where it is for export, if they wish an export bill of lading other than grain.

Mr. DAY. Other than grain?

Mr. BRIGGS. Other than grain.

Mr. DAY. He does it on other commoditie besides grain?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Why do you have an export rate on other commodities besides grain?

Mr. BRIGGS. Our export rate is the inland rate plus the ocean rate arrived at from day to day. It is a combination of the ocean and inland rate.

Mr. DAY. Do you make a through rate at any time?

Mr. BRIGGS. Yes, sir; by ascertaining the ocean rate, but not on grain.

Mr. DAY. Not on grain? They have a fixed export rate?

Mr. BRIGGS. Shippers, as a rule, make their own arrangements for the shipment of grain. They make arrangements for shipment by a certain steamer, and it is too risky to make an export rate, as the steamer may leave without the grain, and then we would be bound for the storage.

Mr. DAY. And you decline to issue through bills for grain?

Mr. BRIGGS. We have not issued any.

Mr. DAY. Do you on flour?

Mr. BRIGGS. Yes, sir.

Mr. DAY. What is the export rate on flour from Chicago?

Mr. BRIGGS. To-day?

Mr. DAY. Yes, sir.
Mr. BRIGGS. I do not know.
Mr. DAY. What was it yesterday?
Mr. BRIGGS. I do not know.
Mr. DAY. The day before?
Mr. BRIGGS. I have not had any occasion to make any inquiry.
Mr. DAY. Do you know what it was at any time during the past three months—what it was at any time?
Mr. BRIGGS. No, sir.
Mr. DAY. When did you last quote an export rate?
Mr. BRIGGS. I can not remember.
Mr. DAY. Have you quoted an export rate this year?
Mr. BRIGGS. I think not.
The CHAIRMAN. Mr. Briggs, it is our usual time for taking a recess, and we will adjourn now until 2 o'clock.

AFTER RECESS.

JUNE 9, 1897, 2.15 p. m.

The CHAIRMAN. Gentlemen, the commission has made the following amendment to the order in this proceeding:

It appearing that the order in this matter, originally made on the 10th day of March, A. D. 1897, at Washington, D. C., may not be sufficiently broad to include traffic originating west of Chicago and transported through Chicago and Chicago Junction points, it is ordered that the aforesaid original order be enlarged and amended so as to include all transportation of grain and grain products from or through Chicago and Chicago Junction points to the points named in said original order and intermediate points.

Mr. WILLIAMSON. I suppose the roads which have already complied with that need pay no further attention to it?
The CHAIRMAN. We have enlarged the order, that witnesses may not be mistaken as to the scope of the inquiry.
Mr. WILLIAMSON. I think some of the roads have answered fully.
Mr. DAY. I will ask Mr. Briggs to resume the stand.

L. BRIGGS resumed the stand.

Mr. DAY. I think when we adjourned, Mr. Briggs, we were discussing the matter of export bills. You were explaining to me what traffic goes forward under through bills of lading to, say, the United Kingdom, or any point abroad to which bills are issued, and I think you got to the point of stating that export traffic over your route over which you issue through bills of lading for export traffic was limited to live freight or other goods than grain.
Mr. BRIGGS. Yes, sir.
Mr. DAY. You will state just what the fact is where you were interrupted. You were right in the middle of it, and I want a complete explanation as to that.
Mr. BRIGGS. I stated that it was not customary, as a rule, to issue through bills of lading to Liverpool and foreign ports on grain. The owner of the grain, as a rule, contracts his ocean freights and takes domestic bills on grain to New York or Boston, as the case may be.
Mr. DAY. Have you issued any through bill on grain this year?
Mr. BRIGGS. I have no recollection of doing so.
Mr. DAY. I understood you to say that where you do issue through bills the rate is made up—how?
Mr. BRIGGS. You mean on a through rate to Liverpool, for instance?
Mr. DAY. Yes, sir; or London.

Mr. BRIGGS. It would be made up of the tariff rate to the seaboard plus the obtainable ocean rate at the time the contract was made with the ocean steamship.

Mr. DAY. Who quotes the steamship rate when you issue through bills?

Mr. BRIGGS. We either get them from the steamship agents at Chicago or from some of the steamship agents in New York.

Mr. DAY. The traffic that is carried over your line to the seaboard which bears an export rate is that billed out on a through bill of lading to the point of final destination?

Mr. BRIGGS. The only export rate is on corn. We would give a bill of lading reaching to New York for export.

Mr. DAY. You have not billed any of that through to Liverpool?

Mr. BRIGGS. No, sir.

Mr. DAY. What has been your export rate on corn this year?

Mr. BRIGGS. Fifteen cents. I do not remember whether it has been that the entire year, but there is a rate of 15 cents on export corn.

Mr. DAY. Has it ever been lower than that?

Mr. BRIGGS. No, sir.

Mr. DAY. Do you know of any instance where grain for export was carried for a lower rate than 15 cents to the seaboard?

Mr. BRIGGS. All rail?

Mr. DAY. Yes, sir; all rail.

Mr. BRIGGS. I do not.

Mr. DAY. Do you know of any instance where it was carried lower by rail than by water?

Mr. BRIGGS. Well, I think the prevailing rate on corn to New York—though I am not sure—by lake and rail to day, would be less than 15 cents to New York.

Mr. DAY. That is water to Buffalo and then rail, is it?

Mr. BRIGGS. Yes, sir.

Mr. DAY. How low have you heard that quoted?

Mr. BRIGGS. Well, I can not say. I am not familiar with that.

Mr. DAY. You do not participate in that traffic at all?

Mr. BRIGGS. No, sir; we do not.

Mr. DAY. I am asking you simply for information what you had heard it quoted at.

Mr. BRIGGS. Well, I have not the data.

Mr. DAY. There is a traffic here billed out by your road; was carried over your road February 9. This particular lot of corn was carried East for export. I understood you this morning to say that if it was export grain that you issued a through bill.

Mr. BRIGGS. No, sir.

Mr. DAY. Do you mean to say that you do not issue a through bill at all on grain?

Mr. BRIGGS. Did not on any of that grain. Lately they are not issuing export bills of lading on grain—that is, a through bill of lading.

Mr. DAY. Can you tell me what your divisions were on this export grain?

Mr. BRIGGS. Where did it go to?

Mr. DAY. It was destined to Liverpool, according to this bill; delivered to New York, billed to New York. Munford & Co. to Collander, at Liverpool; order, inform W. S. Collander. Perhaps he was in New York.

Mr. BRIGGS. I take it he was.

Mr. DAY. Do you know who Collander is?

Mr. BRIGGS. No, sir. I can give you the division of the rate to Buffalo, if that is what you want. I can not give it to you just now.

Mr. DAY. Do you get a different division of the traffic through to New York than on the division to Buffalo?

Mr. BRIGGS. We get our local rate to Buffalo, 12½ cents; but we get our proportion of 15 to New York.

Mr. DAY. You do not know what that is?

Mr. BRIGGS. I can get it.

Mr. DAY. I would like to know that. This grain, in which Munford was the consignor, it was carried at the export rate. You do not know who Collander is, the man who was to be notified of it at New York?

Mr. BRIGGS. I do not know him.

Mr. DAY. How do you know that grain went for export?

Mr. BRIGGS. I do not know that.

Mr. DAY. You do not have any information respecting that.

Mr. BRIGGS. No, sir.

Mr. DAY. If a person came to you offering grain going for export by way of New York, you would take it on his statement at the export rate?

Mr. BRIGGS. We would bill it to New York for export if he declared it was to go for export.

Mr. DAY. You do not have any proof that it is in fact for export?

Mr. BRIGGS, No; we have no way of knowing it.

Mr. DAY. As far as your road is concerned, that traffic may be used for domestic purposes—domestic consumption at the port of New York—or at whatever port in the East it is delivered at?

Mr. BRIGGS. After we give it to the connection at Buffalo we do not know what becomes of it. Our interest ceases when we deliver it.

Mr. DAY. A man comes to you, having a house in New York, and he tells you he wants you to carry this grain to New York for export. You carry it for him at the export rate?

Mr. BRIGGS. If billed for export it would be taken at the export rate.

Mr. DAY. How is it expressed?

Mr. BRIGGS. Corn to New York for export.

Mr. DAY. On the bill of lading?

Mr. BRIGGS. Yes, sir.

Mr. DAY. How is it done in the waybills?

Mr. BRIGGS. The same way, exactly. It is usually billed to some foreign agent at New York, who looks out for the exporting of it.

Mr. DAY. Speaking of the traffic of the Baltimore and Ohio that was turned over to you in February. Do you remember the amount that was in February?

Mr. BRIGGS. I am having a statement compiled of that this afternoon.

Mr. DAY. Showing the quantity of it?

Mr. BRIGGS. Yes, sir.

Mr. DAY. And your division?

Mr. BRIGGS. And the division.

Mr. DAY. The traffic—where was it loaded?

Mr. BRIGGS. Some of it came from elevators to Chicago, and some came from Western roads to the Baltimore and Ohio.

Mr. DAY. How do you know any of it came out of the elevator in Chicago?

Mr. BRIGGS. Our waybills show where it came from.

Mr. DAY. And they show it came out of the elevators?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Whose elevators?
Mr. BRIGGS. I do not remember now the name of the elevator.
Mr. DAY. Do you remember any of them?
Mr. BRIGGS. I think some of it came from the Union Elevator.
Mr. DAY. And what other?
Mr. BRIGGS. I do not remember any other.
Mr. DAY. You do remember that some of it came out of elevators?
Mr. BRIGGS. Yes, sir.
Mr. DAY. And remember that some of it came from Western roads?
Mr. BRIGGS. Yes, sir.
Mr. DAY. They turned it over to the Baltimore and Ohio, and they turned it over to you. The waybills contain that—the expense bill, or whatever it was?
Mr. BRIGGS. The waybills show the originating point.
Mr. DAY. What waybills do you speak of?
Mr. BRIGGS. Our own.
Mr. DAY. They showed a point at which it originated?
Mr. BRIGGS. Yes, sir.
Mr. DAY. And how was that information acquired as to the point of origin?
Mr. BRIGGS. The Baltimore and Ohio, in turning the cars over to us, turned over their expense bills, showing the point of origin.
Mr. DAY. That was the evidence upon which your waybill was made up?
Mr. BRIGGS. Yes, sir.
Mr. DAY. Have you those expense bills?
Mr. BRIGGS. Undoubtedly.
Mr. DAY. I will ask you, Mr. Briggs, to produce those expense bills to the commission. Now, what back charges were there accompanying this grain?
Mr. BRIGGS. Back charges?
Mr. DAY. Yes, sir.
Mr. BRIGGS. If a car came from a Western road their charges would follow as back charges.
Mr. DAY. What other charges?
Mr. BRIGGS. I do not know of any other charges.
Mr. DAY. Did you make any allowance to the Baltimore and Ohio for loading the cars, for transferring the grain from the Western cars to their cars?
Mr. BRIGGS. I did not; no, sir.
Mr. DAY. Did your road?
Mr. BRIGGS. I do not know.
Mr. DAY. Or switching expenses? Would your record show that?
Mr. BRIGGS. No, sir.
Mr. DAY. They would not show it?
Mr. BRIGGS. No, sir.
Mr. DAY. You have indicated the switching expenses in this paper [referring to answer of railroad].
Mr. BRIGGS. No.
Mr. DAY. It is here.
Mr. BRIGGS. That must be the switching expense of getting to the elevator, which follows as back charges?
Mr. DAY. From where to the elevator?
Mr. BRIGGS. From the elevator, the switching of the road, pulling the car into the elevator, the elevator was probably not on the Baltimore and Ohio, but on some foreign road.

Mr. DAY. Here is an instance where the switching charge is $1.

Mr. BRIGGS. That is the switching, I think, to the Union Elevator, $1.

Mr. DAY. To the elevator?

Mr. BRIGGS. Yes, sir.

Mr. DAY. It says, under the captions "name of connecting carrier, rail or water, switch or transfer line from which received, and waybill reference, number and date," your report shows Baltimore and Ohio Railroad, from which it was received; P. R. O., as near as I can make it out, D, 114.

Mr. BRIGGS. That is the pro number.

Mr. DAY. What does that mean?

Mr. BRIGGS. It is a system of keeping accounts in the local office.

Mr. DAY. That is your own private reference?

Mr. BRIGGS. Either ours or the the Baltimore and Ohio's; probably ours.

Mr. DAY. What does "D" indicate?

Mr. BRIGGS. That is a series.

Mr. DAY. And "number" means what?

Mr. BRIGGS. I can not tell you the technical meaning of those. It is some system the local agents have of keeping their accounts. They are ready references.

Mr. DAY. Is it possible that the switching charge was some service rendered by the Baltimore and Ohio road?

Mr. BRIGGS. If there is any switching charge following those shipments of grain from an elevator—in other words, the Union Elevator, as I now recall it, is not on the Alton road, and they make a charge of $1 to reach that elevator, and in giving us that it is charged as back charge against the grain.

Mr. DAY. What road does the switching from your road to the elevator in that case?

Mr. BRIGGS. They would do it for the Baltimore and Ohio in that case.

Mr. DAY. What road does the switching?

Mr. BRIGGS. The Chicago and Alton in that case, or it might be the Baltimore and Ohio run up there, with a trackage arrangement, with their own engines.

Mr. DAY. Can you give approximately the number of cars that were turned over to you by the Baltimore and Ohio?

Mr. BRIGGS. I can not tell you. I will tell you that to-morrow morning.

Mr. DAY. Did it occur more than once?

Mr. BRIGGS. No, sir.

Mr. DAY. There has been one lot?

Mr. BRIGGS. You mean on one day?

Mr. DAY. Yes, sir.

Mr. BRIGGS. Oh, no; it continued for a day or two.

Mr. DAY. A day or two?

Mr. BRIGGS. I do not know. I will give you the data to-morrow.

Mr. DAY. You will furnish that to-morrow, with the other data required?

Mr. BRIGGS. Yes, sir.

Mr. DAY. And these expense bills that accompanied the traffic that were turned over to you by the Baltimore and Ohio. The expense bills that we wish you to bring are the expense bills for grain and the products of grain, but the traffic which you are to report to the commission is all the traffic that was turned over to your road by the Baltimore and Ohio and also by any other road.

Mr. BRIGGS. Is it not in that statement now?

Mr. DAY. I truly do not know.

Mr. BRIGGS. I think you have it all in those sheets—all I can give you.

Mr. DAY. The expense bills contain all?

Mr. BRIGGS. There is no use in giving you the total of the cars, because you have that there now.

Mr. DAY. The expense bills will show the total number of cars?

Mr. BRIGGS. You only want the expense bills on grain? It will show the same as that.

Mr. DAY. I only ask you as to grain.

Mr. BRIGGS. Do you want me to duplicate that statement? You ask as to all the tonnage?

Mr. DAY. I want the total tonnage turned over to you.

Mr. BRIGGS. I will give you both to-morrow.

Mr. DAY. All lines?

Mr. WILLIAMSON. Do you want it from the Lake Shore and Baltimore and Ohio?

Mr. DAY. I want the total tonnage of the Nickel Plate from other roads, whatever it is, whatever lines it came by. Some of this traffic that was turned over to your road was consigned by C., H. & Co. Do you know who C., H. & Co. are?

Mr. BRIGGS. Carrington, Hanna & Co.

Mr. DAY. Had they an elevator here?

Mr. BRIGGS. No, sir.

Mr. DAY. Do they operate an elevator?

Mr. BRIGGS. No, sir; not in Chicago.

Mr. DAY. Or at Chicago junction points?

Mr. BRIGGS. I do not know whether they do or not at Chicago. I do not think they do.

Mr. DAY. At any of the Chicago junction points, so called?

Mr. BRIGGS. They have one at Kankakee.

Mr. DAY. Does your road extend to Kankakee?

Mr. BRIGGS. No, sir.

Mr. DAY. Have you had business relations with Carrington, Hanna & Co. respecting traffic?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Do you know F. J. Ely?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Where does Mr. Ely reside?

Mr. BRIGGS. I do not know his residence, but his office is in Chicago.

Mr. DAY. Where is his office?

Mr. BRIGGS. Chicago, on Pacific avenue.

Mr. DAY. What is his occupation?

Mr. BRIGGS. Grain dealer.

Mr. DAY. Broker?

Mr. BRIGGS. I presume you would consider him a broker—no, shipper—he buys and ships his own grain.

Mr. DAY. Ships his own grain?

Mr. BRIGGS. Yes, sir; buys it and ships it.

Mr. DAY. And the Chicago-O'Neil Company?

Mr. BRIGGS. At South Chicago; their elevator.

Mr. DAY. You have had business relations with them?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Who operates the Union Elevator?

Mr. BRIGGS. I do not know.

Mr. DAY. Do you know a concern called Snydiker, Fyfe & Co.?

Mr. BRIGGS. I do not know them.

Mr. DAY. Do you know the published tariff rates to the seaboard which prevail over your line, the published rates which your line has published to the seaboard during the past three or four months?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Have you offered at any time to take freight—grain or its products—to the seaboard at less than the tariff rates?

Mr. BRIGGS. Absolutely, I have not.

Mr. DAY. Have you instructed anybody else to do it?

Mr. BRIGGS. I have not.

Mr. DAY. Has any agent within your jurisdiction offered that on behalf of your line?

Mr. BRIGGS. He has not.

Mr. DAY. Has any traffic been carried for any of those people I have named?

Mr. BRIGGS. Not to my knowledge.

Mr. DAY. At less than the published tariff rates?

Mr. BRIGGS. Not to any knowledge of mine.

Mr. DAY. Have you any information to that effect?

Mr. BRIGGS. I have none.

Mr. DAY. Where is it weighed?

Mr. BRIGGS. The property weighed?

Mr. DAY. That you carry east?

Mr. BRIGGS. If you transfer it through an elevator it would be weighed in the transfer elevator at Stony Island. If it came out of an elevator it would be weighed out of the elevator.

Mr. DAY. What is the transfer elevator at Stony Island?

Mr. BRIGGS. It is the one I spoke of this morning.

Mr. DAY. How is it operated?

Mr. BRIGGS. It is operated by Harry D. Chase, who does the transferring for our road. We transfer all of our grain through that elevator.

Mr. DAY. Do you pay any other transfer service than that?

Mr. BRIGGS. No, sir.

Mr. DAY. Now, when it is transferred he makes the weights for you?

Mr. BRIGGS. The board of trade have a weighmaster at that elevator who certifies to the weight. The buyer of the grain settles with the seller on that weight. It is the official board of trade weight.

Mr. DAY. Now, the weight which the elevator man gives to you, how is that evidenced; is it a certificate; does he certify that car number so and so on your road contains so many pounds of corn, or whatever the commodity?

Mr. BRIGGS. We have a system of elevating which is probably as fine as any in the country. The Western car comes to our elevator—we would have a Western car, for instance—loaded with grain. We have what we call the hopper process. The entire contents of that car is dumped into the scale and weighed accurately to an ounce. The grain is then transferred to one of our cars. The board of trade inspector is there and certifies to the in-weight and to the out-weight. He is a disinterested party entirely.

Mr. DAY. He does that in writing?

Mr. BRIGGS. He gives a certificate.

Mr. DAY. You get your certificate?

Mr. BRIGGS. We are not interested in it at all. We keep a record in the office. It is the seller and buyer who are interested in the weights.

Mr. DAY. You take the weights of the official weigher for all goods?

Mr. BRIGGS. Yes, sir.

Mr. DAY. In all instances, do you insert that as the weights?

Mr. BRIGGS. That is billed as the weight of the car.

Mr. DAY. Both in the bill of lading and the waybill?

Mr. BRIGGS. Yes, sir; in both.

Mr. DAY. Has any instance occurred on your line within your observation or within the scope of your information during the year 1897 where different weights have been expressed in the bills of lading than those expressed in the waybills?

Mr. BRIGGS. Never to my knowledge.

Mr. DAY. When settlements are made on traffic going East over your line, are they made on the basis of what is expressed in the waybill or bill of lading?

Mr. BRIGGS. The bill of lading is an exact copy, as far as the weight is concerned, of the waybill. They tally; they agree.

Mr. DAY. They ought to.

Mr. BRIGGS. They always do.

Mr. DAY. Do you know of any instance of underbilling?

Mr. BRIGGS. I do not.

Mr. DAY. Or false billing of any kind?

Mr. BRIGGS. I do not think it would be possible to do it.

Mr. DAY. Or rebates?

Mr. BRIGGS. Or rebates.

Mr. DAY. You do not know of any; have not heard of any?

Mr. BRIGGS. No, sir.

Mr. DAY. Do you know of any advantage that any shipper has had over your line over any other shipper?

Mr. BRIGGS. I do not.

Mr. DAY. In respect to the transportation of grain?

Mr. BRIGGS. I do not.

Mr. DAY. Or flour?

Mr. BRIGGS. Or flour.

Mr. DAY. When you carry flour coming from the West billed, say, to points west of trunk-line territory—what is your flour rate to Buffalo, say?

Mr. BRIGGS. Twelve and one-half cents.

Mr. DAY. What is your wheat rate?

Mr. BRIGGS. Twelve and one-half cents.

Mr. DAY. When you carry wheat to New York by way of Buffalo, what is your division of the haul?

Mr. BRIGGS. We get approximately 54 per cent of the rate.

Mr. DAY. From the point of origin?

Mr. BRIGGS. Of the proportion accruing east of Chicago, if on a through rate.

Mr. DAY. You get 54 per cent?

Mr. BRIGGS. Approximately. That is not accurate, because the divisions vary by the different routes, according to the mileage, one being longer or shorter than another.

Mr. DAY. Then, take the domestic rate from Chicago to New York, approximately you get 54 per cent of that?

Mr. BRIGGS. Of 20 cents.

Mr. DAY. Suppose it came from the Mississippi River and the rate was 23 cents?

Mr. BRIGGS. The proportion east of Chicago would be 19 cents, of which we would receive approximately 54 per cent of the 19.

Mr. DAY. Where you get this percentage, it is on the proportion east of Chicago?

Mr. BRIGGS. Yes, sir. The rate from the Mississippi River is divided as follows: The rate being 20 cents from Chicago, the rate from the river being 23, there is a 3-cent terminal at New York deducted. That leaves 20 cents. The Western roads get 20 per cent, which would leave 19 east of Chicago.

Mr. DAY. And if it came from the Missouri River, would it be any different?

Mr. BRIGGS. There would be no difference; it only runs to the Mississippi River.

Mr. DAY. Minneapolis takes the Mississippi River rate?

Mr. BRIGGS. No, sir.

Mr. DAY. What rate does it take?

Mr. BRIGGS. Agreed rates.

Mr. DAY. What is the agreed rate?

Mr. BRIGGS. On what?

Mr. DAY. On flour.

Mr. BRIGGS. Thirty cents to New York, of which the Western lines get 10 and the Eastern lines 20.

Mr. DAY. You mean 10 cents?

Mr. BRIGGS. Yes, sir; and the local rate from Chicago.

Mr. DAY. And you get what percentage of that?

Mr. BRIGGS. To New York?

Mr. DAY. Yes, sir.

Mr. BRIGGS. Approximately 54 per cent.

Mr. DAY. Have you had an export rate on wheat?

Mr. BRIGGS. We have not; only on corn.

Mr. DAY. Here is a shipment of flour from the Washburn-Crosby Milling Company to New York where the statement is made that your rate is 8.6 cents. Does that mean to New York from here, or is that the amount the Nickel Plate receives?

Mr. BRIGGS. Where is that waybill from—Chicago?

Mr. DAY. Lockwood.

Mr. BRIGGS. That is the proportion east of Lockwood.

Mr. DAY. Where is Lockwood?

Mr. BRIGGS. That is about 20 miles from here, almost on the State line between Illinois and Indiana.

Mr. DAY. On what road is Lockwood?

Mr. BRIGGS. It is on our line; one of our stations. It is our junction with the Chicago, Hammond and Western.

Mr. DAY. What is the proportion of the rate that the Chicago, Hammond and Western receives?

Mr. BRIGGS. Eight per cent.

Mr. DAY. Is that 18.6 cents there the Chicago rate to the seaboard, or is that the Lockwood rate to the seaboard?

Mr. BRIGGS. It is the proportion of the Minneapolis rate accruing east of Lockwood.

Mr. DAY. Does Chicago take the Lockwood rates?

Mr. BRIGGS. Yes, sir.

Mr. DAY. In and out?

Mr. BRIGGS. In and out.

Mr. DAY. You treat it as you do Chicago?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Are you able to state whether the back charges on that traffic of $68.40 were paid by your company, or whether it was prepaid?

Mr. BRIGGS. Does it show there as back charges?

Mr. DAY. It shows what the back charges were.

Mr. BRIGGS. Then it was not prepaid. We paid the Chicago, Hammond and Western.

Mr. DAY. Who made the actual payments in these instances?

Mr. BRIGGS. It is made by joint account settlement, monthly or weekly, through the auditor's office.

Mr. DAY. Your offices are at Cleveland?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Does the local agent pay the balance for the Chicago, Hammond and Western or was the payment made from your general office at Cleveland?

Mr. BRIGGS. They make it through the auditor's office. We deliver them traffic and they deliver us traffic and the joint balance shows the amount, and it is paid through the auditor.

Mr. DAY. How does he know as to business transferred between your road and the Chicago, Hammond and Western?

Mr. BRIGGS. From our office.

Mr. DAY. Your local agents do not settle by balances, then?

Mr. BRIGGS. I think our local agent in Chicago does.

Mr. DAY. But not as to the Chicago, Hammond and Western?

Mr. BRIGGS. I think not. I think that is done through the auditor.

Mr. DAY. You have a local agent at Lockwood?

Mr. BRIGGS. Yes, sir; I do not think he settled. I think that is done through the auditor.

Mr. DAY. Which one makes these settlements? Have you more than one?

Mr. BRIGGS. No.

Mr. DAY. What is his name?

Mr. BRIGGS. J. P. Curry.

Mr. DAY. You were aware, I suppose, of the movement of this flour over your line from the Chicago, Hammond and Western?

Mr. BRIGGS. I have no particular knowledge of it.

Mr. DAY. Were you aware how that was going that way?

Mr. BRIGGS. I might have noticed it, and I might not have. We are receiving business from them every day.

Mr. DAY. These waybill figures—C. H. & W., W. B. F., 322—what does that mean—W. B. F.?

Mr. BRIGGS. That is Chicago, Hammond and Western waybill.

Mr. DAY. F there indicates what?

Mr. BRIGGS. It is a series. Some company's waybill reference.

Mr. DAY. Do you have anything at all to do with the negotiation for this traffic; did you have anything to do with it?

Mr. BRIGGS. No, sir.

Mr. DAY. Do you know who had?

Mr. BRIGGS. No, sir.

Mr. DAY. Have you made any arrangement, engagements, respecting the interchange of traffic with the Chicago, Hammond and Western officials, or any of them?

Mr. BRIGGS. No, sir.

Mr. DAY. Or with any of these milling companies?

Mr. BRIGGS. No, sir.

Mr. DAY. The Consolidated Milling Company, the Washburn-Crosby Milling Company, or the Pillsburg-Crosby Company?

Mr. BRIGGS. None of them.

Mr. DAY. Or any of their agents?

Mr. BRIGGS. No, sir.

Mr. DAY. Nothing at all to do with this particular traffic?

Mr. BRIGGS. Nothing whatever.

Mr. DAY. Have any of your subordinates had anything to do with that flour traffic?

Mr. BRIGGS. Not that I know of.

Mr. DAY. Never heard anything as to that; have no information as to that?

Mr. BRIGGS. No, sir.

Mr. DAY. Have you any information as to who of the officials of the Nickel Plate have had to do with that?

Mr. BRIGGS. I do not know.

Mr. DAY. Did you make any arrangements respecting it?

Mr. BRIGGS. I do not know of any arrangements or anybody who had anything to do with it.

Mr. DAY. There is a very considerable traffic here that went over your route billed to Knox or Hancock & Co., Philadelphia. Do you know anything about that traffic—how it came to go that way?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Did you have anything to do with procuring it?

Mr. BRIGGS. Yes, sir.

Mr. DAY. With whom did you make the engagement?

Mr. BRIGGS. I solicited the business from Carrington, Hanna & Co., and they gave it to us and it was carried at the tariff absolutely.

Mr. DAY. Did they enjoy any consideration for giving it to your road?

Mr. BRIGGS. They did not.

Mr. DAY. How did that reach your road?

Mr. BRIGGS. It reached us at Knox.

Mr. DAY. Is Knox a station on your line?

Mr. BRIGGS. Yes, sir. It is the connection with the I. I. I.

Mr. DAY. How did it reach your line? What elevator did it come out of?

Mr. BRIGGS. It came out of Carrington & Hanna's elevator at Kankakee.

Mr. DAY. That is on the line of the road that delivers to you?

Mr. BRIGGS. Yes, sir.

Mr. DAY. You carried that on a through rate from Kankakee?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Kankakee enjoys the benefit of Chicago rates?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Gets what is called Chicago junction point rates?

Mr. BRIGGS. Yes, sir.

Mr. DAY. Was that export traffic?

Mr. BRIGGS. So far as I know, it was. I think it went to Philadelphia, did it not?

Mr. DAY. Yes, sir; it was so billed. What representations were made to you as to the destination of the traffic?

Mr. BRIGGS. Not any.

Mr. DAY. What was the conversation you had with the Carrington & Hanna firm, or any of their agents respecting it?

Mr. BRIGGS. They told me they had sold corn to Hancock & Co., at Philadelphia. I asked them to give it to our route and they said they would.

Mr. DAY. No inducement proceeded from you or your company to them?

Mr. BRIGGS. Absolutely, none whatever.

Mr. DAY. Was not that rather an awkward way to carry it to Philadelphia?

Mr. BRIGGS. It is the only route we have to Philadelphia.

Mr. DAY. The only route you have?

Mr. BRIGGS. And as good as any other.

Mr. DAY. Is it as direct?

Mr. BRIGGS. Yes, sir.

Mr. DAY. You turn it over to the Lehigh?

Mr. BRIGGS. The Lehigh and the Philadelphia and Reading.

Mr. DAY. Was that carried by your road or billed by you, or was it by one of these fast freight lines?

Mr. BRIGGS. It went by one of the fast freight lines. It would have to go by one of the fast freight lines.

Mr. DAY. It would have to go that way?

Mr. BRIGGS. Yes, sir.

Mr. DAY. I understood you could bill it through.

Mr. BRIGGS. I said we could not bill anything through except on fast freight line divisions.

Mr. DAY. Then you will not take traffic tendered to the Nickel Plate line without billing it over one of the fast freight lines?

Mr. BRIGGS. The Nickel Plate is the fast freight line.

Mr. DAY. The New York, Chicago and St. Louis?

Mr. BRIGGS. We have no local divisions. We have line divisions over all our line routes.

Mr. DAY. Your through arrangements for through rates and through routing and through billing——

Mr. BRIGGS. Is all a matter for the fast freight lines.

Mr. DAY. The principal carrier does not participate in that. The principal—the New York, Chicago and St. Louis—as a corporation, does not participate in that. It is done by these outside lines. That is auxiliary?

Mr. BRIGGS. It is not; you do not grasp it.

Mr. DAY. I think probably I do not.

Mr. BRIGGS. We have local divisions with all connections west of Buffalo. That is what we term local business. For anything going east of the western termini, that is fast freight line business, and we have no divisions over those lines for that business—the Nickel Plate fast freight line, the Traders' Dispatch, the Lackawanna, and the Interstate Dispatch fast freight line. We use those divisions. The Nickel Plate road sends it as though we had divisions locally, though we have not.

Mr. DAY. You do not get as much as though it was carried and you delivered it at Buffalo?

Mr. BRIGGS. No; because it is a through rate; certainly not.

Mr. DAY. Now, then, if grain is offered to the New York, Chicago and St. Louis Railroad here for Philadelphia, you would not bill it through excepting by fast freight line? You would not issue the bill of lading on your road?

Mr. BRIGGS. No, sir; because we have no divisions?

Mr. DAY. What company is the P. W. F. M. Co.? It is a consignor of a large quantity of flour?

Mr. BRIGGS. It is the Pillsbury-Washburn Milling Company.

Mr. DAY. Did you have anything to do with that traffic?

Mr. BRIGGS. Nothing whatever.

Mr. DAY. Now, this Carrington & Hanna traffic that we have just

been referring to that went by your road. You say they enjoyed no advantage whatever by shipping that way?

Mr. BRIGGS. I make that statement, positively.

Mr. DAY. They paid as much and had the same advantage as they would have had if they had sent it over the Lake Shore?

Mr. BRIGGS. No more and no less than they would get by any line running via Buffalo. They gave it to me because I solicited the business.

Mr. DAY. You did not offer any special inducements for the traffic?

Mr. BRIGGS. As a rule. I think I do not have to.

Mr. DAY. Do you do that?

Mr. BRIGGS. I do not do anything but solicit the business.

Mr. DAY. You do not offer any inducements?

Mr. BRIGGS. I do not.

Mr. DAY. You offer nothing of value, like free transfer, free switching, absorbing of a portion of a rate, or any service of that kind?

Mr. BRIGGS. Nothing of that kind.

Mr. DAY. This appears to have gone by the Traders' Dispatch, this Carrington & Hanna business; what cars was that carried out in?

Mr. BRIGGS. I do not recall—I do not remember.

Mr. DAY. If you will furnish the data you have been asked for, Mr. Briggs, that is all I shall ask for to-day.

Mr. BRIGGS. To-morrow will be time enough?

Mr. DAY. Yes, sir; if you will furnish it in the morning. I will ask you one other question before you go. I do not know but what I have covered it this morning. These auxiliary agencies—these line agents—who are under your supervision, or assistants of yours, have they offered any inducements to shippers, or to any shipper, to bill traffic over your road?

Mr. BRIGGS. They have not.

Mr. DAY. If they had done so would it be a matter that would come to your notice in the necessary course of your business?

Mr. BRIGGS. I think it would.

Mr. DAY. Or if they had made any promises?

Mr. BRIGGS. If they had made any promise I think I would know it.

Mr. DAY. Do you do business on the board of trade?

Mr. BRIGGS. I do. I am a member of the board of trade.

Mr. DAY. Have you at any time during this year offered any inducements of a pecuniary nature or a valuable character to a shipper as an inducement to him to ship traffic over your route?

Mr. BRIGGS. Most positively I have not.

Mr. DAY. Not been a party to anything of the kind?

Mr. BRIGGS. Not been a party to anything of the kind.

Mr. DAY. You have no information that it has been done?

Mr. BRIGGS. I have no information that it has been done.

Mr. DAY. Over your route?

Mr. BRIGGS. Or any other route.

Mr. DAY. That is all. I will call Mr. Howe.

L. BRIGGS recalled.

Mr. BRIGGS. You asked me to show the number of cars received from the Baltimore and Ohio road. I give you that: Amounted to 363 cars from February 26 to May 18, 1897, showing the rate from the point of origin. Now, of the proportion of the subdivision east of Chicago the New York, Chicago and St. Louis road received to Painesville, Ohio, on Baltimore business, 44.5 per cent; on Washington, 46.5 per

cent; on Philadelphia, 41 per cent; on New York, 35 per cent of the subdivision east of Chicago.

Mr. DAY. What was the subdivision east of Chicago?

Mr. BRIGGS. I mean by that, if it was local business—grain, for instance, to Baltimore would be 18 cents.

Mr. DAY. Of the rate from Chicago east?

Mr. BRIGGS. If it was an 18-cent local rate from Chicago, we would receive 44.5 per cent of that rate. If from the river the proportion east of Chicago was less than the local rate, we would still receive the same proportion of the subdivision east of Chicago.

Mr. DAY. I see.

Mr. BRIGGS. Now, you asked for the expense bill of that traffic. I don't really feel justified in giving you this. They are all legitimate, and you can examine them if you wish to, but they are not the records of my office. They are the original records of our local agent, and our local agent is in Washington, and I hardly feel justified in giving you the records of his office. I must insist that they go back into his office.

Mr. DAY. So far as that is concerned, I should return them to you, anyhow, Mr. Briggs.

Mr. BRIGGS. They are not the records of my office. I have asked our local agent for them. There is nothing in here that is not in there, as a matter of fact [referring to papers handed Mr. Day].

Mr. DAY. Mr. Briggs, you have the expense bills that come to your road—that traffic received from your western connections?

Mr. BRIGGS. I have here the traffic received from the Baltimore and Ohio Railroad, which you asked for yesterday, and then you asked for the expense bill on freight, for instance, that shows that the car came to us from the Union Elevator. The Baltimore and Ohio got it at the Union Elevator and gave it to us. There is no rate except the $1 back charges. You will find we billed it out and it went to Baltimore. It is billed out at 17 cents.

Mr. DAY. You paid the Baltimore and Ohio the dollar?

Mr. BRIGGS. Yes, sir. We billed it at tariff rates.

Mr. DAY. The traffic that comes to you from the Indiana, Illinois and Iowa or the Elgin, Joliet and Eastern or the Chicago, Hammond and Western or Chicago, Indiana and Western, in all instances is there a documentary description of that car accompanying it?

Mr. BRIGGS. Yes, sir.

Mr. DAY. What is the paper that comes to your road?

Mr. BRIGGS. An expense bill such as this.

Mr. DAY. The same as that?

Mr. BRIGGS. Yes, sir. At Lockwood, where we connect with the Chicago, Hammond and Western, the local agent would return an expense bill with the car, showing through rate and division.

Mr. DAY. I will endeavor to return those to you before I leave town, Mr. Briggs, so that you may return them.

Mr. BRIGGS. You will promise me that faithfully?

Mr. DAY. I will endeavor to conform with your wishes.

Mr. BRIGGS. Our agent is away and he may jump all over me when he returns.

Mr. DAY. Now, I want you to produce, also—you might write this down so you will get it exact—all of the expense bills which accompanied grain or flour or any grain product received by your line from the Chicago, Hammond and Western between January 1 and March 15, destined for Atlantic Seaboard or intermediate points.

The CHAIRMAN. That is, intermediate points between Chicago and the seaboard?

Mr. DAY. Yes, sir; intermediate points between Chicago and the seaboard.

Mr. BRIGGS. As a matter of fact, I have no jurisdiction over the Chicago, Hammond and Western traffic.

Mr. DAY. I know that.

Mr. BRIGGS. I have no power by which to get the expense bills. Our attorney is here, and you might make that request of him.

Mr. WILLIAMSON. I will ask for them.

Mr. BRIGGS. I can not get them, Judge; they are not within my jurisdiction.

Mr. DAY. They are in the office of your local agent?

Mr. BRIGGS. No, sir; in the office of our local agent which is 20 miles east of here.

Mr. DAY. All the traffic coming via the Hammond and Western went to Lockwood and was rebilled from Lockwood?

Mr. BRIGGS. Yes, sir. I presume they are kept in Lockwood. That is a matter that our general freight agent would have to decide.

Mr. WILLIAMSON. I will ask the general freight agent.

The CHAIRMAN. In whose possession are they?

Mr. DAY. The local agent at Lockwood.

The CHAIRMAN. What was his name?

Mr. BRIGGS. I don't remember his name.

(The statement submitted by Mr. Briggs is hereto annexed and marked Exhibit 3.)

(Exhibit 3, referred to in the testimony of Mr. Briggs, is a long tabulated statement, being a description of 365 cars, containing 15,000,000 pounds of freight, mostly grain, turned over to the New York, Chicago and St. Louis Railway Company by the receivers of the Baltimore and Ohio Railway Company.)

A. P. BIGELOW, a witness, having been duly sworn, testified as follows:

Mr. DAY. State your official relations to the Baltimore and Ohio Railroad Company?

Mr. BIGELOW. General Western freight agent.

Mr. DAY. What is your jurisdiction?

Mr. BIGELOW. Chicago and the West.

Mr. DAY. How far west—the entire West?

Mr. BIGELOW. Yes, sir.

Mr. DAY. State the general scope of the work in your charge?

Mr. BIGELOW. The solicitation and handling of the freight traffic.

Mr. DAY. The making of contracts in respect to traffic?

Mr. BIGELOW. The securing of freight, making of contracts.

Mr. DAY. Did you see the answer in this case filed by your road?

Mr. BIGELOW. I did not.

Mr. DAY. Did you see the schedule made up showing the traffic?

Mr. BIGELOW. I did not.

Mr. DAY. You had nothing at all to do with the making of that?

Mr. BIGELOW. Nothing.

Mr. DAY. Do you know who did?

Mr. BIGELOW. I do not.

Mr. DAY. You do not know whether the work was done at Chicago?

Mr. BIGELOW. I do not.

Mr. DAY. Were you consulted in regard to the reply that was to be made to the order of the commission?

Mr. BIGELOW. I was not.

Mr. DAY. Who is the local agent at Chicago of the Baltimore and Ohio?

Mr. BIGELOW. We have no officer with that title.

Mr. DAY. Well, who is the local man at Chicago who performs the work usually looked after by the local agent of a railroad in a great city?

Mr. BIGELOW. T. E. Wayman.

Mr. DAY. What is the extent of his duties—stating it generally—or what are his duties?

Mr. BIGELOW. He handles the accounts, looks after the freight-house work, the outside yard, the transfer of grain, and all that pertains to the physical side of the work.

Mr. DAY. Does he make settlements with the connecting carrier that delivers traffic to you where the charges follow the traffic?

Mr. BIGELOW. I believe in cases of switching accounts he does, but I am not absolutely positive in regard to that.

Mr. DAY. What relation does he sustain to your office. Is he a subordinate of yours?

Mr. BIGELOW. Yes, sir; to the extent that he handles the freight traffic in connection with the details.

Mr. DAY. Does he make contracts, or has he made contracts since you have held the office that you now hold, for through traffic—traffic from the West destined for the seaboard or intermediate points?

Mr. BIGELOW. He does not make any contracts at all.

Mr. DAY. Does he make contracts in relation to traffic originating at Chicago; for example, grain or the products of grain in storehouses or elevators?

Mr. BIGELOW. That is not supposed to be his function. He may do it as he runs across it accidentally.

Mr. DAY. If he has done so it is an accidental case?

Mr. BIGELOW. Yes, sir.

Mr. DAY. How long have you occupied your present official position with the Baltimore and Ohio?

Mr. BIGELOW. Under the receivers, since May 1, 1896.

Mr. DAY. Do you make contracts, or have you during the past year, for grain—the transportation of grain or the products of grain from Mississippi River points or points west of there to points east of Chicago?

Mr. BIGELOW. What do you mean by the term "contracts?"

Mr. DAY. Well, engaging to transport the traffic named or to participate in it, either with the shipper directly or a shipper's agent, or through another carrier?

Mr. BIGELOW. Yes, sir; I have.

Mr. DAY. You were requested to bring some documents with you here to-day, Mr. Bigelow. Did you bring any documentary evidence?

Mr. BIGELOW. I did not bring what you asked for.

Mr. DAY. I asked if you brought any?

Mr. BIGELOW. I brought some through waybills.

Mr. DAY. What do those bills embrace—what traffic do they embrace?

Mr. BIGELOW. Grain products.

Mr. DAY. Grain and grain products?

Mr. BIGELOW. No grain.

Mr. DAY. During the first three months of the current year, the present year, did your road receive any grain from the Chicago, Hammond and Western Railroad?

Mr. BIGELOW. I think not, Mr. Day.

Mr. DAY. Do the papers you brought cover all the traffic, either grain or grain products, that came to your road by way of the Chicago, Hammond and Western?

Mr. BIGELOW. No, sir.

Mr. DAY. What do those papers cover; what traffic do they cover?

Mr. BIGELOW. Grain products to Baltimore.

Mr. DAY. What other traffic of the description named have you expense bills or waybills or through bills for that was received from the Chicago, Hammond and Western by your road other than those you have here?

Mr. BIGELOW. I wish you would repeat that question.

Mr. DAY. What other traffic destined to what other points—I speak now of grain and its products—have you expense bills or waybills or through bills for in your possession other than those you have here?

Mr. BIGELOW. I have none in my possession other than those I brought here.

Mr. DAY. What traffic did your road receive from the Chicago, Hammond and Western that is not covered by these bills during the period mentioned?

Mr. BIGELOW. A multiplicity of products.

Mr. BOND. Mr. Day means grain and grain products.

Mr. BIGELOW. I do not think we had a pound of the traffic to New York or Philadelphia. We may have had some scattering shipments to other points, perhaps to intermediate points. These bills cover it, with a possible few exceptions.

Mr. DAY. This subpœna asks for the original expense bills for grain and the products of grain received by the Baltimore and Ohio from the Chicago, Hammond and Western during the period named.

Mr. BIGELOW. It asks for all expense bills.

Mr. DAY. You have brought these papers in response to this subpœna?

Mr. BIGELOW. No; I brought them purely as a matter of courtesy to you, Mr. Day, for the reason that your subpœna asks for something which does not exist

Mr. DAY. When traffic was turned over to your road during this period by the Chicago, Hammond and Western road, what papers—what documentary evidence—accompanied the traffic?

Mr. BIGELOW. Through waybills.

Mr. DAY. Is this the only paper that accompanied this particular car of traffic [reading from paper produced by witness]—Illinois Central, I. C.—80?

Mr. BIGELOW. It was of course accompanied by what is known as a memorandum waybill, or car card, tacked on the side of the car.

Mr. DAY. And no other paper?

Mr. BIGELOW. No other paper.

Mr. DAY. Do you understand that to be the uniform practice with the Chicago, Hammond and Western in delivering traffic to other connecting carriers?

Mr. BIGELOW. I can not answer as to any other company. That is our practice.

Mr. DAY. Now, the papers that were called for—what was intended to be covered were the papers that accompanied each car of grain or the products of grain that your road received from the Chicago, Hammond and Western during the period of time mentioned in the subpœna.

Mr. BIGELOW. You have them before you [referring to package of papers handed to Mr. Day by witness].

Mr. DAY. These, you say, cover only the traffic that went to Baltimore?

Mr. BIGELOW. For the simple reason that they were the only ones accessible to me at the time. These waybills pass from the point of shipment to destination, and go into the archives of the agent at destination. In order to get all these bills, we should have to gather them up at considerable expense and time to bring them to you here. These bills were available at Baltimore, although I will not assert that I have brought all of them. Some of them may have been lost in the Baltimore office.

Mr. DAY. Why did you limit it to traffic destined to Baltimore?

Mr. BIGELOW. As we recall, there was no traffic to New York. I have no recollection of any.

Mr. DAY. Or Philadelphia?

Mr. BIGELOW. Or Philadelphia. You may find some isolated cases of grain products to New York. If you desire the same data on the New York traffic, we will be very glad to obtain it for you.

Mr. DAY. The commission desired all the documentary evidence that accompanied traffic or related to traffic that came to your road from the Chicago, Hammond and Western between January 1 and the date mentioned in the subpœna, and these papers that you have brought relate only to that which went to Baltimore?

Mr. BIGELOW. Yes, sir.

Mr. BOND. Witness has stated that if any went to other places it was only isolated shipments.

Mr. DAY. When traffic was delivered during this period to your road by the Chicago, Hammond and Western, or coming from the Chicago, Hammond and Western, your agent received a paper or papers describing the traffic and the back charges?

Mr. BIGELOW. Our agent where?

Mr. DAY. At Chicago.

Mr. BIGELOW. No, sir.

Mr. DAY. He did not?

Mr. BIGELOW. No, sir.

Mr. DAY. Did your agent keep any book account of the traffic received?

Mr. BIGELOW. Only a car record. Your question related to Chicago, Hammond and Western business, did it not?

Mr. DAY. Yes, sir.

Mr. BIGELOW. I answered that.

Mr. DAY. When there were back charges accompanying the traffic, who settled; what officer of your road made the settlement with the Chicago, Hammond and Western for those back charges—charges which followed the traffic?

Mr. BIGELOW. Under the system of waybilling it is an auditor's settlement.

Mr. DAY. The local agent did not keep any record of that?

Mr. BIGELOW. No, sir.

Mr. DAY. There was no adjustment of those accounts between your local agent and the—what do you say the title of your man is?

Mr. BIGELOW. Freight agent.

Mr. DAY. Your freight agent and the agent of the Chicago, Hammond and Western?

Mr. BIGELOW. No, sir.

Mr. DAY. Do you know the agent of the Chicago, Hammond and Western Railroad at Hammond or Whiting?

Mr. BIGELOW. Not personally.

Mr. DAY. Where does your road connect with the Chicago, Hammond and Western?

Mr. BIGELOW. At Whiting, Ind.

Mr. DAY. All traffic delivered to your road from the Chicago, Hammond and Western direct is delivered at Whiting?

Mr. BIGELOW. At Whiting.

Mr. DAY. This waybill, Series B, 21, car No. 9050, Chicago, St. Paul and Kansas City road—were there back charges following that traffic [handing paper to witness]?

Mr. BIGELOW. Yes, sir.

Mr. DAY. What was the amount of it?

Mr. BIGELOW. $24.88. It shows on the bill.

Mr. DAY. Where was that settlement made with the Chicago, Hammond and Western for that traffic?

Mr. BIGELOW. With the Baltimore and Ohio, or the Chicago Great Western.

Mr. DAY. The Baltimore and Ohio. Who made it and where was the settlement made with the Chicago, Hammond and Western? Did you account to the Chicago, Hammond and Western for the $24.88 back charges, or the Chicago Great Western?

Mr. BIGELOW. The Chicago, Hammond and Western.

Mr. DAY. Where?

Mr. BIGELOW. Presumably through the auditor's office, under the established custom on through bills.

Mr. DAY. Here is an expense bill, No. 97, L. N. A. & C., consignment of flour from Minneapolis to Cincinnati, Ohio. I will ask you to look at that [handing paper to witness]. Under any circumstances, during the first three or four months of this year, did your road receive documents from the Chicago, Hammond and Western like that?

Mr. BOND. Do you refer to this traffic? I think you would save trouble and time, Mr. Day, if we had it understood that questions which do not especially include other traffic refer only to the traffic under consideration.

Mr. DAY. I refer to grain and grain products, irrespective of point of origin or destination, unless I state otherwise.

Mr. BIGELOW. We may have received a waybill of this description for grain or the products of grain going to some points off the Baltimore and Ohio road, where the system of through billing does not prevail.

Mr. DAY. Have you seen bills like this before from the Chicago, Hammond and Western road?

Mr. BIGELOW. Never.

Mr. DAY. Do you know of any other road extending from Chicago east, connecting with the Chicago, Hammond and Western, that consigns its billing to papers of the description you brought here?

Mr. BIGELOW. I do not.

Mr. DAY. I will state to you, for your information, Mr. Bigelow, that my recollection of the testimony at Chicago of the Chicago, Hammond and Western officer was that this was what they call an expense bill, and accompanied all the traffic which they delivered to connecting carriers on the east. They stated, further, that the expense bill contained substantially or all that the waybill contained, and some data in addition to that.

Mr. BIGELOW. I do not so understand it.

Mr. DAY. And as a matter of fact from all the roads, I think all without exception that extend east of Chicago, connecting at Chicago

with the Chicago, Hammond and Western road, have turned over to the commission expense bills like these.

Mr. BIGELOW. If they have delivered such documents to the Baltimore and Ohio road it is the first time I knew of it.

Mr. DAY. Are you able to state that these through waybills cover all the traffic destined for Baltimore that your road received from the Chicago, Hammond and Western from January 1 to what date—March 15?

Mr. BIGELOW. March 15. I am not sure that those cover it all; no, sir.

Mr. DAY. Will you send to the commission or produce to the commission all of the bills, whether they are expense bills or waybills for grain or grain products, that your road received from the Chicago, Hammond and Western during the period covered by this inquiry?

Mr. BIGELOW. If, as you state, the Chicago, Hammond and Western delivers to the Baltimore and Ohio Railroad the transfer bill, such as that you have exhibited to me, it will be a very simple matter for us to produce all that information; but, as I stated before, I never knew that they ever surrendered such a document under the through waybill system.

The CHAIRMAN. And then you have already made the additional statement, as I understand, that all this grain has been carried under that system?

Mr. BIGELOW. We commenced the through waybilling system last November.

Mr. DAY. I infer, and I think it was so specifically stated, that there were three systems of billing traffic—there was the through bill and there was the waybill, each road having its own waybill independently of whether the traffic was through billed; and then there was the expense bill, which the delivering road turned over to the receiving road with each consignment of traffic, and these are what were called the expense bills. They were described as expense bills by the officers testifying on behalf of the Chicago, Hammond and Western and the officers of the receiving roads leading out of Chicago, and from your testimony I am led to believe that if these did not exist on your road your road is the exception to the rule and the only exception that I am aware of.

Mr. BIGELOW. I qualified as intelligibly as I could that if the Chicago, Hammond and Western performed the superfluous labor of sending to our agent at Whiting an expense bill when they go to the trouble to make a through waybill, I do not understand why they do it. That is the object of the through bill, to avoid this unnecessary labor.

Mr. DAY. I ask you, Mr. Bigelow, will you produce to the commission or send to the commission promptly the bills, whether they be waybills, expense bills, or through bills, for all traffic which you received—which your road received—from the Chicago, Hammond and Western between the dates of, say, January 1 and April 1.

Mr. BIGELOW. If they exist at Whiting Station, expense bills of that form which have been delivered to us by the Chicago, Hammond and Western road, yes, sir; we will send them to you.

Mr. DAY. That is not responsive to my question.

Mr. BIGELOW. I will endeavor to produce all the documents bearing on the question.

Mr. DAY. How soon may we expect them?

Mr. BIGELOW. It may take some time to gather them.

The CHAIRMAN. We understand you to say that as to what Mr. Day

calls expense bills that you receive from that road, and which have their right place at Whiting—those you will produce if they exist?

Mr. BIGELOW. Yes, sir.

The CHAIRMAN. And as to the others, you will do what you can to gather them up?

Mr. BIGELOW. That is the idea exactly.

Mr. DAY. If the expense bills do not exist, Mr. Bigelow, with your return of the other bills, of whatever character they may be, please accompany your return with the names and addresses of the agents from whom you receive the through bills, or whatever you call the bills. Do you know Mr. Banks?

Mr. BIGELOW. Yes, sir.

Mr. DAY. Chance?

Mr. BIGELOW. Yes, sir.

Mr. DAY. Whitehead?

Mr. BIGELOW. Yes, sir.

Mr. DAY. Who is the receiver for the Chicago and Northern Pacific?

Mr. BIGELOW. I do not know.

Mr. DAY. Who do you do business with with respect to traffic that comes to you from the Chicago and Northern Pacific?

Mr. BIGELOW. Henry S. Hawley, general agent.

Mr. DAY. At Chicago?

Mr. BIGELOW. At Chicago.

Mr. DAY. The Chicago and Northern Pacific is in the hands of receivers, is it not?

Mr. BIGELOW. I declare I do not know.

Mr. DAY. What are Mr. Hawley's initials?

Mr. BIGELOW. Henry S.

Mr. DAY. How long has he been acting for that road?

Mr. BIGELOW. I do not know.

Mr. DAY. For what period of time can you state?

Mr. BIGELOW. About a year.

Mr. DAY. Now, in dealing for traffic on that road you had your relations with Mr. Hawley?

Mr. BIGELOW. What dealings I have had with that road I had with Mr. Hawley.

Mr. DAY. You know Mr. Whitehead?

Mr. BIGELOW. Yes, sir.

Mr. DAY. You have had business relations with Mr. Whitehead?

Mr. BIGELOW. Yes, sir.

Mr. DAY. Do you know a man by the name of Corse?

Mr. BIGELOW. I do not.

Mr. DAY. Or Gallagher?

Mr. BIGELOW. Well, I know several Gallaghers?

Mr. DAY. Well, a shipper.

Mr. BIGELOW. I know several of them.

Mr. DAY. Of flour, for example?

Mr. BIGELOW. State definitely the Gallagher you mean.

Mr. DAY. The Gallagher who represented the Minneapolis concern.

Mr. BIGELOW. Yes, sir; I know him.

Mr. DAY. What is his first name?

Mr. BIGELOW. He is commonly called "Harry." I do not know his initials.

Mr. DAY. Do you know Mr. Corse, representing a Minneapolis concern?

Mr. BIGELOW. I do not.

Mr. DAY. During the past six months or, say, during the four or five months prior to April 1, did you have in your service, or did the Baltimore and Ohio have in its service, that you know of, agents to whom you paid commissions on traffic that was turned over to you—soliciting agents, for example.

Mr. BIGELOW. We have no such representatives working on commissions.

Mr. DAY. Did you pay commissions to anybody during the first four or five months prior to April 1 on traffic turned over to the Baltimore and Ohio?

Mr. BIGELOW. I did not.

Mr. DAY. Did the Baltimore and Ohio?

Mr. BIGELOW. Well, the Baltimore and Ohio is a very large system.

Mr. DAY. I am asking so far as your information goes.

Mr. BIGELOW. The Baltimore and Ohio did not.

Mr. DAY. Did you, acting for or in behalf of the Baltimore and Ohio receivers or the Baltimore and Ohio road—when I speak of the Baltimore and Ohio I mean both the receivers and the company, or either—did you make any engagements with anybody to pay commissions on traffic that was routed by the Baltimore and Ohio line?

Mr. BIGELOW. I did not.

Mr. DAY. Have you any information that agreements or engagements of that nature were made with anybody on behalf of the Baltimore and Ohio management?

Mr. BIGELOW. I have not.

Mr. DAY. Have you any reason to believe that commissions were paid to anybody?

Mr. BIGELOW. I have no reason to believe that they were paid.

Mr. DAY. Or that engagements were made with anybody to pay them commissions on traffic routed by your line or part of your line?

Mr. BIGELOW. No.

Mr. DAY. Or any engagements made with another railroad or other railroad officials, officers, or agents to contribute to the payment of commissions or bonuses or rebates on traffic?

Mr. BIGELOW. I have no such information.

Mr. DAY. Have you any information of engagements made to pay commissions or claims by way of rebate, or to secure traffic over your route or a part of your line by contributing through another corporation or to any other individual in respect to that traffic?

Mr. BIGELOW. I have no such information.

Mr. DAY. In the traffic that comes to your road by way of the Chicago, Hammond and Western, for example, what portion of the through rate did your road contribute to the Chicago, Hammond and Western—take this bill for example, B— 22—, car 21203?

Mr. BIGELOW. Eight per cent.

Mr. DAY. Eight per cent of the through rate?

Mr. BIGELOW. From Hammond to Baltimore.

Mr. DAY. Do you know whether your road paid that 8 per cent to the Chicago, Hammond and Western?

Mr. BIGELOW. I presume they did.

Mr. DAY. Who would know? Who has knowledge of those transactions?

Mr. BIGELOW. Those settlements are made on what are known as the auditor's settlement.

Mr. DAY. Which auditor?

Mr. BIGELOW. The auditor of revenue.

Mr. DAY. What is his name—who is the auditor of revenue of your road?

Mr. BIGELOW. W. B. Booth is the general auditor.

Mr. DAY. Do you remember who the auditor of revenue is?

Mr. BIGELOW. He is.

Mr. DAY. When you said the auditor of revenue, you meant the general auditor?

Mr. BIGELOW. The general auditor.

Mr. DAY. Where is J. L. Davis assistant agent?

Mr. BIGELOW. At South Chicago.

Mr. DAY. There is a stamp on this waybill which reads "B. & O. R. R., January 16, 1897; J. L. Davis, assistant agent." What does that mean?

Mr. BIGELOW. It means that he received that waybill.

Mr. DAY. Does that mean the traffic accompanied it?

Mr. BIGELOW. No, sir.

Mr. DAY. What evidence does your officer have that the traffic was received?

Mr. BIGELOW. Only the waybill.

Mr. DAY. What does this stamp "E" indicate?

Mr. BIGELOW. I do not know.

Mr. DAY. Did you ever make, in respect to any of this traffic that was carried—that your road received from the Chicago, Hammond and Western road—any arrangement, any agreement, tacitly or expressly, with any of the officials of the Chicago, Hammond and Western to shrink out a portion of the through rate for the benefit of the traffic or the benefit of the shipper of the traffic, or any agent or other person?

Mr. BIGELOW. I did not.

Mr. DAY. Have you information that anybody connected with the Baltimore and Ohio did that?

Mr. BIGELOW. I have not.

Mr. DAY. Have you any reason to believe that that was done?

Mr. BIGELOW. I have not.

Mr. DAY. Or anything of that nature?

Mr. BIGELOW. No.

Mr. DAY. Is it your belief, Mr. Bigelow, that the full rate, as expressed in these bills, was actually received by your road and retained by it?

Mr. BIGELOW. So far as I know, it was.

Mr. DAY. I will ask if that is your belief.

Mr. BIGELOW. That is my belief.

Mr. DAY. Have you any information that any of this traffic that was carried over your road or any part of your road enjoyed a lower rate of transportation in any part of its journey than the then lawful published tariff rate?

Mr. BIGELOW. I have no such information.

Mr. DAY. Have you had any conversation with Mr. Whitehead in regard to the shipment of flour from Minneapolis, any portion of which was expected to be routed your way?

Mr. BIGELOW. Not that I recall. I may have had a conversation with him in regard to flour shipments passing over our road, but I do not recall it.

Mr. DAY. Or grain shipments?

Mr. BIGELOW. No, sir.

Mr. DAY. Has Mr. Whitehead, during the six months, or any other official—anybody representing the Chicago, Hammond and Western—approached you, endeavoring to secure concessions in the transporta-

tion of traffic which was proposed to be routed by the Baltimore and Ohio, wholly or in part?

Mr. BIGELOW. They have not.

Mr. DAY. Has anybody during that period approached you and asked you for concessions?

Mr. BIGELOW. Undoubtedly they have.

Mr. DAY. Have you agreed to any?

Mr. BIGELOW. I have not.

Mr. DAY. Tacitly or otherwise, have you consented in any way to such concessions?

Mr. BIGELOW. I have not.

Mr. DAY. Have any of your subordinates, so far as you know?

Mr. BIGELOW. They have not.

Mr. DAY. Have any of your superiors, so far as you are informed?

Mr. BIGELOW. So far as I am informed, they have not.

Mr. DAY. Do you wish the commission to understand you as stating that so far as your information goes all traffic that has been carried over the Baltimore and Ohio, or any portion of it, has paid the full, the lawful, the published tariffs, and that that money has been retained by the Baltimore and Ohio?

Mr. BIGELOW. I wish to be so understood.

Mr. DAY. And no concessions or rebates or preferences have been granted in respect to any of the traffic during this period?

Mr. BIGELOW. I wish to be so understood.

Mr. DAY. You state that out of the through rate from Hammond or Whiting to the East, to the Atlantic Seaboard, the Chicago, Hammond and Western received 8 per cent?

Mr. BIGELOW. Yes, sir.

Mr. DAY. What does it receive, or what did it receive during this period, on intermediate traffic?

Mr. BIGELOW. That would depend entirely on its destination.

Mr. DAY. Well, say Pittsburg.

Mr. BIGELOW. Speaking from memory, 20 per cent.

Mr. DAY. Have you any information of traffic having been brought through from the Mississippi or Minneapolis or St. Paul on a through bill, and at an intermediate point being rebilled to intermediate points?

Mr. BIGELOW. I have no such information.

Mr. DAY. Have you any reason to believe that that was done?

Mr. BIGELOW. I certainly have no reason to believe it.

Mr. DAY. You have not heard that intimated in respect to the traffic which your road participated in?

Mr. BIGELOW. Unqualifiedly no.

Mr. DAY. And you have no reason to believe that it was done?

Mr. BIGELOW. No, sir.

Mr. DAY. Have you any reason to believe that intermediate traffic was carried either in whole or in part on the proportion of the through rate?

Mr. BIGELOW. There has been no such manipulation of the rates.

Mr. DAY. Has there been any false billing in respect to any of the traffic your road has participated in?

Mr. BIGELOW. Positively none.

Mr. DAY. Any traffic coming from the Mississippi River that you could control, or points west of the Mississippi river—you say your jurisdiction extends as far west as the Pacific Ocean—now, traffic that comes from points west of the Mississippi River that you could control, how would you route it to, say, Philadelphia or Baltimore?

Mr. BIGELOW. From the point of origin?

Mr. DAY. Yes, sir; or from the Mississippi River.

Mr. BIGELOW. We do not control it.

Mr. DAY. I say, suppose you could. You say you make contracts. Suppose you make contracts with the shipper. How would you route from the Mississippi River, say?

Mr. BIGELOW. I do not know of any such case, Mr. Day.

Mr. DAY. Is the Baltimore and Ohio Southwestern a part of the system over which you exercise some jurisdiction?

Mr. BIGELOW. It is not.

Mr. DAY. Who does sustain the relation to the Baltimore and Ohio Southwestern which you sustain to the Baltimore and Ohio?

Mr. BIGELOW. I can not answer that.

Mr. DAY. You have no knowledge or information?

Mr. BIGELOW. I do not know.

Mr. DAY. I am asking now for your information.

Mr. BIGELOW. I am answering the question honestly; I do not know.

Mr. DAY. Do you know J. F. Harris & Co.?

Mr. BIGELOW. I do not.

Mr. DAY. Or any of the members of that concern?

Mr. BIGELOW. I do not.

Mr. DAY. Do you know Shearer, of St. Louis?

Mr. BIGELOW. I do not.

Mr. DAY. Do you have anything to do with traffic coming from Burlington or East Burlington—through the gateway of Burlington or East Burlington, transferred at Beardstown for Baltimore?

Mr. BIGELOW. I have not.

Mr. DAY. Have you had any relation at all to that traffic?

Mr. BIGELOW. None whatever.

Mr. DAY. Or made any contracts or engagements with anybody in respect to that traffic?

Mr. BIGELOW. Never.

Mr. DAY. Who is your immediate superior, Mr. Bigelow?

Mr. BIGELOW. Mr. C. S. Wight.

Mr. DAY. Give his title, please.

Mr. BIGELOW. Manager of freight traffic.

Mr. DAY. Where is his office?

Mr. BIGELOW. At Baltimore.

Mr. DAY. Who is his immediate superior?

Mr. BIGELOW. I presume the receivers.

Mr. DAY. Is there any traffic manager between Mr. Wight and the receivers; any traffic man who exercises superior control over traffic to Mr. Wight?

Mr. BIGELOW. Not that I know of.

Mr. DAY. Which of the receivers manages the traffic department?

Mr. BIGELOW. I do not know that I can answer that. I am not informed as to the functions of the receivers.

Mr. DAY. Have you had any instructions or any correspondence with either of your superior officers respecting the securing of traffic, making concessions to secure it, or to participate in concessions?

Mr. BIGELOW. No.

Mr. DAY. None?

Mr. BIGELOW. None.

Mr. DAY. Or the giving of rebates?

Mr. BIGELOW. Have I not just answered that?

Mr. DAY. Well, I just put it in a different form.

Mr. BIGELOW. I have had no such correspondence.

Mr. DAY. Have you had any conversation with either of your superiors, or any of your superiors, respecting rebates or concessions, or the giving of preferences or any inducement to secure traffic?

Mr. BIGELOW. I have not.

Mr. DAY. Has anyone that you know of—any of the people who are subordinate to you or who sustain any relations to you—had such conversations, that you know of?

Mr. BIGELOW. No.

Mr. DAY. Do you have any elevators or storehouses on the line of your road that are controlled by your road?

Mr. BIGELOW. Within what territory?

Mr. DAY. Within your jurisdiction?

Mr. BIGELOW. No.

Mr. DAY. At Chicago or Chicago common points?

Mr. BIGELOW. None.

Mr. DAY. Or junction points?

Mr. BIGELOW. None.

Mr. DAY. Or anywhere else?

Mr. BIGELOW. There may be on the line of the road; I do not know where they are.

Mr. DAY. You do not know of them?

Mr. BIGELOW. I do not.

Mr. DAY. Who pays the cost of transferring grain or the products of grain which your road received during the first three months of this year from Western connections or connections transferring to your cars?

Mr. BIGELOW. I can not answer that.

Mr. DAY. You do not know?

Mr. BIGELOW. I do not know.

Mr. DAY. You do not know what the rule is in respect to it?

Mr. BIGELOW. Are you referring to grain we transfer from car to car?

Mr. DAY. That is one way; how about that?

Mr. BIGELOW. We do that with our own men and pay our own men in the usual way.

Mr. DAY. You do that wherever the grain is transferred from car to car?

Mr. BIGELOW. Yes, sir; and the men are paid for it as I am paid for my services.

Mr. DAY. You have not had any relations with the owners, consignors, or consignees of the grain to make an allowance for the transfer?

Mr. BIGELOW. We could not have, as we perform the labor ourselves.

Mr. DAY. Do you make any allowance for transferring from elevators into your cars?

Mr. BIGELOW. We make an allowance if the grain is cleaned, clipped, or manipulated in that way in passing through private elevators.

Mr. DAY. What allowance?

Mr. BIGELOW. My recollection is $1.50 on oats and $1.25 on grain.

Mr. DAY. Where cleaned, clipped, or manipulated?

Mr. BIGELOW. Where it is put through the process peculiar to a cleaning house.

Mr. DAY. You do that in the case of grain that your road carries out of Chicago to the East?

Mr. BIGELOW. We do where it passes through an elevator.

Mr. DAY. And that without reference to how it got into the elevator

or whose grain it was when it went into the elevator? I mean, here is an elevator containing 500,000 bushels of grain you want to carry to the East. Now, independently of what road brought it to that elevator or whose grain it was when it went into the elevator, do you in all cases make that allowance?

Mr. BIGELOW. No.

Mr. DAY. In what instances do you make the allowance?

Mr. BIGELOW. We take the grain and put it into a private elevator and take it out again.

Mr. DAY. Grain coming from the West?

Mr. BIGELOW. All grain comes from the West.

Mr. DAY. Well, you do not bring it from the West?

Mr. BIGELOW. No, sir.

Mr. DAY. State fully the circumstances.

Mr. BIGELOW. Where a Western railroad brings to our yard 10 car loads of grain for transfer at a private elevator we take the 10 cars in and place 10 of our own cars alongside the elevator. When these identical 10 cars of grain are cleaned and manipulated it is loaded into these 10 Baltimore and Ohio cars, and $1.50 on oats and $1.25 on corn is charged for the labor of making the transfer.

Mr. DAY. Why do not you transfer that yourself? You say you have facilities for doing it?

Mr. BIGELOW. We have no clipping or cleaning facilities.

Mr. DAY. Do you make that allowance in any instance where the grain is not clipped or cleaned?

Mr. BIGELOW. We do not.

Mr. DAY. Is that a uniform allowance to everybody?

Mr. BIGELOW. So far as I know.

Mr. DAY. What shippers at Chicago enjoy that advantage or privilege; to whom, in other words, have you made this allowance?

Mr. BIGELOW. To the elevators; we do not make it to the shippers.

Mr. DAY. You were speaking of private elevators?

Mr. BIGELOW. In distinction from what are known as public elevators, where the allowance is not made.

Mr. DAY. What particular elevators have you done that for in the last three months?

Mr. BIGELOW. Wherever any work of that kind has been performe .

Mr. DAY. Can not you name some of them?

Mr. BIGELOW. If I were to name some of them, if I were to be absolutely correct, I would name every one of them, if I could.

Mr. DAY. Well, you can name some.

Mr. BIGELOW. I think we have allowed it to Pratt, Requa, the Calumet; I think there is another elevator called Little's; there may be others.

Mr. DAY. Is Pratt's elevator on the line of your road?

Mr. BIGELOW. No, sir.

Mr. DAY. It is on the Wabash road?

Mr. BIGELOW. I believe it is.

Mr. DAY. Do you allow it to Carrington & Hanna?

Mr. BIGELOW. If they put any grain in our possession to pass through an elevator to be manipulated. Let me go back and correct a statement made. I believe I said this allowance was made on corn, did I not?

Mr. DAY. Yes, sir.

Mr. BIGELOW. I guess my first statement was correct in regard to

that, although I am a little in doubt as to the correctness of that being applicable on corn.

Mr. DAY. Have you made any agreements with shippers respecting transfer charges?

Mr. BIGELOW. The shipper has no interest in the transfer charges.

Mr. DAY. I am asking.

Mr. BIGELOW. No, sir.

Mr. DAY. Have you made any agreement with shippers by which they receive anything of value—any money, service, or anything else—from your road other than the transportation charges, the published transportation rates?

Mr. BIGELOW. I have not.

The CHAIRMAN. You mean anything in reduction?

Mr. DAY. Yes, sir; that would tend to reduce it, whether a switching charge or the remitting of car demurrage, remitting storage or the payment of storage which the shipment would otherwise have to pay.

Mr. BIGELOW. I have made no such arrangement.

Mr. DAY. Do you know of any such arrangement made on behalf of the company or road you represent?

Mr. BIGELOW. I do not.

Mr. DAY. Or in which it has participated?

Mr. BIGELOW. I do not.

Mr. DAY. Or whether arrangement was made by another officer?

Mr. BIGELOW. I do not.

Mr. DAY. Have you made any arrangement with any shipper or anybody acting for a shipper or for any corporation that would tend to reduce the cost of transportation below the local published rates, whether the traffic was carried by your road or any other road?

Mr. BIGELOW. I have not.

Mr. DAY. You say you have been acting for the receivers since the road went into the hands of receivers, in 1896 some time?

Mr. BIGELOW. I have been employed by the Baltimore and Ohio Railroad, and am presumably acting for the receivers.

Mr. DAY. I thought I repeated substantially your answer. If you have no relations with the receivers, I would like to have you state that.

Mr. BIGELOW. I presume I am serving the receivers.

Mr. DAY. Are you paid for your services by the Baltimore and Ohio Railroad Company, or the receivers of the Baltimore and Ohio Railroad Company? I only want to know what your relations to the receivers are—whether you are a servant of the receivers or not.

Mr. BIGELOW. I think Mr. Bond better answer that question.

Mr. BOND. Oh, yes, sir; he is, of course.

Mr. DAY. You had something to do, Mr. Bigelow, with the turning over to the New York, Chicago and St. Louis road some traffic during the first three months of this year. Just state now what you did in relation to that.

Mr. BIGELOW. I turned over some east-bound traffic to them.

Mr. DAY. State what you did in regard to it. Commence at the beginning and run through and tell the whole story.

The CHAIRMAN. You mean, how he came to turn it over?

Mr. DAY. Yes, sir; how he came to do it, and what he did in pursuance of it.

Mr. BIGELOW. You want to know the reasons leading up to it?

Mr. DAY. Just tell the whole thing, the whole transaction—what it was, what led up to it, what you did, and how you did it?

Mr. BIGELOW. I will state my understanding of it. As I understand it, the trunk lines engaged in some strife for traffic tacitly agreed that there should be some kind of restraining influence or some material manifestation of sincerity and good faith toward one another, and agreed, if I may put it that way, that they would confine their tonnage to within certain limits. The Baltimore and Ohio simply exceeded its proportion, and in order to establish the fact that it was maintaining the rates and acting in good faith, and as material evidence of that, it turned some of its east-bound traffic over to the New York, Chicago and St. Louis road.

Mr. DAY. What was the Baltimore and Ohio's limit?

Mr. BIGELOW. As I recall it, about 8 per cent.

Mr. DAY. What percentage had it carried at that time?

Mr. BIGELOW. I do not recall.

Mr. DAY. Well, approximately.

Mr. BIGELOW. I can not recall that even approximately.

Mr. DAY. How did you know it had exceeded its limit?

Mr. BIGELOW. I knew at the time.

Mr. DAY. How did you obtain that information?

Mr. BIGELOW. I presume by statistics which were prepared by the association.

Mr. DAY. What association?

Mr. BIGELOW. The Central Freight Association. They maintained, as you know, a statistical bureau.

Mr. DAY. Was it a part of your work at Chicago to apportion the traffic—to divide the traffic?

Mr. BIGELOW. To divide what traffic?

Mr. DAY. This traffic you have been speaking of.

Mr. BIGELOW. Traffic of the Baltimore and Ohio road?

Mr. DAY. Yes, sir.

Mr. BIGELOW. I do not know that it was part of my work; I did it in this case.

Mr. DAY. How did you come to do it?

Mr. BIGELOW. I have just stated that I ascertained that the road was in excess, and I did it.

Mr. DAY. How did you ascertain that it was in excess?

Mr. BIGELOW. From the statistics.

Mr. DAY. What other information had you?

Mr. BIGELOW. None.

Mr. DAY. No communication in respect to the matter from some superior officer?

Mr. BIGELOW. I may have had. I can not tell you.

Mr. DAY. Do you know how much you turned over to the Nickel Plate?

Mr. BIGELOW. No, sir.

Mr. DAY. Have you any idea?

Mr. BIGELOW. I can only guess—entirely from memory; probably 3,000 or 4,000 tons.

Mr. DAY. I do not remember what you said was the purview of your work, your jurisdiction. What was your work? What were you to do there for the Baltimore and Ohio Railroad? What were your general duties?

Mr. BIGELOW. Well, I think it would be almost an impossibility for me to answer that.

Mr. DAY. What was your chief duty?

Mr. BIGELOW. I have no chief duty, except to look after the general interests of the Baltimore and Ohio.

Mr. DAY. What do they cover?

Mr. BIGELOW. Such a multiplicity of affairs——

Mr. DAY. Will you give the chief object of maintaining your office in Chicago and maintaining you in Chicago?

Mr. BIGELOW. The managing of the soliciting force and clerical force.

Mr. DAY. Soliciting what?

Mr. BIGELOW. All classes of business for shipment over the road, both east and west bound; the proper conduct of the outlying offices, and a general supervision over all that relates to the traffic of the Baltimore and Ohio, passing through that gateway.

Mr. DAY. Was a part of your duty the turning away, the giving up, of business you had secured?

Mr. BIGELOW. It became my duty, if those conditions prevailed.

Mr. DAY. I ask now how it became your duty?

Mr. BIGELOW. I do not believe I can answer you how it became my duty.

Mr. DAY. Well, Mr. Wight—is that your superior's name?

Mr. BIGELOW. C. S. Wight.

Mr. DAY. Did you receive any advice from Mr. Wight directing you to turn over this traffic to another competing road?

Mr. BIGELOW. I do not recall that I received any specific instructions from him.

Mr. DAY. Did you receive any instructions, verbally or in writing?

Mr. BIGELOW. Not that I recall; I may have.

Mr. DAY. Did you have any correspondence with him in reference to it?

Mr. BIGELOW. Not that I recall.

Mr. DAY. Did you advise him what you had done?

Mr. BIGELOW. I do not think so.

Mr. DAY. Did you advise anybody?

Mr. BIGELOW. I do not think I did. The statistics show what was done.

Mr. DAY. What statistics?

Mr. BIGELOW. The statistics on which I made the diversion showed it on the conclusion of the diversion.

Mr. DAY. You mean the Central Traffic Association?

Mr. BIGELOW. Yes, sir.

Mr. DAY. Did they show that you received these several thousand tons of freight at Chicago and that you carried it out and turned it over to a competitor?

Mr. BIGELOW. Yes, sir.

Mr. DAY. What is this statistical document called that shows that?

Mr. BIGELOW. I do not know that it has a special name. It is information promulgated for roads in the association.

Mr. DAY. It shows what one road turns over to another?

Mr. BIGELOW. Yes, sir.

Mr. DAY. Where did you get this traffic?

Mr. BIGELOW. What was diverted?

Mr. DAY. Yes, sir.

Mr. BIGELOW. It is impossible for me to answer that question.

Mr. DAY. Did it come from points back of Chicago?

Mr. BIGELOW. It may have.

Mr. DAY. Do you know?

Mr. BIGELOW. I presume some of it did.

Mr. DAY. Did any originate in Chicago?

Mr. BIGELOW. It may have done so.

Mr. DAY. Do you know?

Mr. BIGELOW. Undoubtedly some of it did.

Mr. DAY. Who did you instruct to turn over this traffic to the Nickel Plate?

Mr. BIGELOW. Mr. Wayman, I believe.

Mr. DAY. How much did you tell him to turn over?

Mr. BIGELOW. No specific quantity.

Mr. DAY. What did you say to him?

Mr. BIGELOW. It is impossible for me to recall.

Mr. DAY. Did you say it to him orally?

Mr. BIGELOW. I believe so.

Mr. DAY. Did you give him any written instructions?

Mr. BIGELOW. I am quite sure I did not.

Mr. DAY. Do you want the commission to understand you as testifying that you received no instructions from any of your superiors in regard to the turning of that freight over to the Nickel Plate road?

Mr. BIGELOW. I do not believe that I so stated. I stated that I could not recall that I received instructions.

Mr. DAY. Or any advices?

Mr. BIGELOW. Or advices.

Mr. DAY. Did you have any conversation with either of the receivers in regard to it?

Mr. BIGELOW. Not that I recall.

Mr. DAY. Telegraphic?

Mr. BIGELOW. No.

Mr. DAY. Letter?

Mr. BIGELOW. No.

Mr. DAY. Or from Mr. Wight?

Mr. BIGELOW. I think not.

Mr. DAY. I will ask you, Mr. Bigelow, when you return to your office to make an examination of your records, so that you may be able to testify specifically in regard to that matter, whether you had any instructions to turn that traffic over, or any traffic over, to the Nickel Plate, or any other road; whether any correspondence passed between you and any of your superiors in regard to it?

Mr. BIGELOW. Well, I must request you in turn to state to me specifically in writing exactly what you want, if you please, so that my memory may be refreshed as to what your wishes are. You have no objection to that, have you?

Mr. DAY. No, sir; I will furnish you a copy of the question. Where does your road connect with the Nickel Plate?

Mr. BIGELOW. At Stony Island.

Mr. DAY. Where is the Union Elevator?

Mr. BIGELOW. It is my impression that it is jointly on the Fort Wayne and the Chicago and Alton tracks.

Mr. DAY. Who operates that elevator?

Mr. BIGELOW. I do not know.

Mr. DAY. Do you know any of the officials connected with it?

Mr. BIGELOW. I may know them, but I do not know who they are.

Mr. DAY. The Chicago O'Neill Company—do you know any of those people?

Mr. BIGELOW. I have no personal acquaintance with anyone connected with that firm.

Mr. DAY. Did you have any conversation with anybody representing the New York, Chicago and St. Louis road, known as the Nickel Plate, in regard to that traffic or any traffic?

Mr. BIGELOW. The diverting of the traffic?

Mr. DAY. Yes, sir.

Mr. BIGELOW. I believe I said something to Mr. Briggs on the subject.

Mr. DAY. Who else?

Mr. BIGELOW. No one else that I know of.

Mr. DAY. What did you say to Mr. Briggs?

Mr. BIGELOW. Speaking from memory, I think I stated to him that we were going to send some business over to his line, or words to that effect.

Mr. DAY. What else?

Mr. BIGELOW. That is all.

Mr. DAY. You did not tell him on what account?

Mr. BIGELOW. It is a fair presumption that he knew on what account.

Mr. DAY. I ask you if you told him on what account.

Mr. BIGELOW. Not that I recall.

Mr. DAY. Had any demand been made upon you by any of the people representing the New York, Chicago and St. Louis road for traffic?

Mr. BIGELOW. None.

Mr. DAY. None at all?

Mr. BIGELOW. No, sir.

Mr. DAY. You wish the commission to understand that you, just of your own volition, voluntarily gave away several thousand tons of traffic?

Mr. BIGELOW. I wish you to understand the matter as I have answered it.

Mr. DAY. I am asking you if you wish the commission to understand that. I have asked you a number of questions as to the source of your authority. Now, I ask you, putting it in another form, whether you acted solely of your own volition, voluntarily, or whether you were acting under the direction of anybody?

Mr. BIGELOW. I acted under what I understood to be the general understanding between the roads in connection with that matter.

Mr. DAY. In giving away this traffic to a competing line did you have the authority of anybody for doing it?

Mr. BIGELOW. I do not know that I had any specific authority bearing directly on the matter. I was familiar with the tacit agreement of the roads interested in the matter.

Mr. DAY. Have you diverted traffic before, since the road went into the hands of receivers?

Mr. BIGELOW. We may have done so. I do not recall now.

Mr. DAY. Do you know of any instance where you gave away traffic that your road had obtained—gave it away to a competitor—since the road went into the possession of Federal receivers, other than the Nickel Plate case?

Mr. BIGELOW. I do not recall any.

Mr. DAY. Are you able to say you did not?

Mr. BIGELOW. No; not offhand.

Mr. DAY. Are you able to say there is a precedent for it?

Mr. BIGELOW. With our company?

Mr. DAY. Yes, sir; representing the Baltimore and Ohio Company, or the Baltimore and Ohio receivers?

Mr. BIGELOW. I do not recall whether there was a precedent or not for the action.

Mr. DAY. Have you had any conversation with either Mr. Cowen or Mr. Murray in regard to the diversion of traffic from the Baltimore and Ohio to a competing line?

Mr. BIGELOW. I may have mentioned the fact.

Mr. DAY. When did you have your conversation with either of them?

Mr. BIGELOW. I have not the faintest idea.

Mr. DAY. When did you see Mr. Cowen last?

Mr. BIGELOW. About a week ago.

Mr. DAY. Prior to that, when had you seen him?

Mr. BIGELOW. The week before that.

Mr. DAY. And prior to that?

Mr. BIGELOW. The week before that.

Mr. DAY. In either of those conversations was this subject mentioned?

Mr. BIGELOW. It was not.

Mr. DAY. Have you had any conversation with Mr. Cowen in regard to this traffic since the 1st of April.

Mr. BIGELOW. I have not.

Mr. DAY. Or with Mr. Murray?

Mr. BIGELOW. I may have had with Mr. Murray, but I do not recall it.

Mr. DAY. If you had a conversation with Mr. Murray, when was it?

Mr. BIGELOW. It would be impossible for me to answer that question.

Mr. DAY. You are not able to say that you did have a conversation with him?

Mr. BIGELOW. I am not able to say definitely. I may have done so.

Mr. DAY. Have you any reason to believe that Mr. Murray knew that you had diverted that traffic?

Mr. BIGELOW. He gets the same statistical information I do.

Mr. DAY. Other than that?

Mr. BIGELOW. He may have.

Mr. DAY. Now, this statistical information you mention, is not that simply a résumé of the traffic started from Chicago over the various lines?

Mr. BIGELOW. Yes, sir.

Mr. DAY. Does it on its face show that you diverted traffic from your road to the Nickel Plate road?

Mr. BIGELOW. I think mention is made of that fact in one of those statements.

Mr. DAY. That is printed?

Mr. BIGELOW. No; it is not printed.

Mr. DAY. Who issued the statement you refer to?

Mr. BIGELOW. J. F. Tucker is the commissioner of the Central Freight Association. I do not know who issued it.

Mr. DAY. Who signed it?

Mr. BIGELOW. I do not know. I do not know that I ever looked at one of the circulars to see who signed it.

Mr. DAY. You saw it mentioned in one of those circulars that this traffic had been diverted from the Baltimore and Ohio to the Nickel Plate?

Mr. BIGELOW. I presume I did.

Mr. DAY. Did you have a conversation with Mr. Wight about it?

Mr. BIGELOW. Not that I recall.

Mr. DAY. At no time?

Mr. BIGELOW. Not that I recall.

Mr. DAY. This traffic that was turned over, can you tell me whether it was—look at this paper [showing the paper to witness], page 34, can you tell from this—it says, "W. B. Local, 454." What does that mean?

Mr. BIGELOW. The waybill, I presume.

Mr. DAY (reading). "February 26, consignor, Union Elevator, order of Snydecker, etc.; notify Gill & Fisher, Baltimore, Md.; wheat 43,000 pounds, waybilled to Painesville; proportion of through rate from Chicago to Baltimore, Md." Can you tell from that inspection whether it was through traffic?

Mr. BIGELOW. I do not know anything about it.

Mr. DAY. I am asking whether, having refreshed your memory from that, whether this originated at Chicago or was through traffic.

Mr. BIGELOW. You are speaking of that on there [referring to paper]?

Mr. DAY. I am speaking of that you turned over to the Nickel Plate.

Mr. BIGELOW. I do not know; possibly it originated at both places.

Mr. DAY. If it came through from the West, would it come through on a through waybill?

Mr. BIGELOW. No; unless it came over some road with which we had through billing arrangements.

Mr. DAY. With what Western road did you have at this time through billing arrangements?

Mr. BIGELOW. Let me go back and answer that question again, and state that none of the traffic came on a through waybill that you have reference to, because we have no through billing arrangements with roads west of Chicago.

Mr. DAY. None?

Mr. BIGELOW. None.

Mr. DAY. Why did you not tell me at the start, if you knew that? We occupied considerable time in getting at that fact.

Mr. BIGELOW. You did not ask me that question. I stated that we had through billing arrangements with the Chicago, Hammond and Western. That is not Chicago; that is Whiting.

Mr. DAY. Is not that a Chicago common point?

Mr. BIGELOW. It takes a Chicago rate—I must have misunderstood you. There was no reason why I should not answer that. If I misled you, you misled me, because I did not understand your question.

Mr. DAY. I understand now that you have through billing arrangements with the Chicago, Hammond and Western, and that road only?

Mr. BIGELOW. I construed your inquiry to mean Chicago proper. It is my impression that we have no through billing arrangements with any other road except the Chicago, Hammond and Western through the Chicago gateway; I think our interchange with the three I's road and the Elgin, Joliet and Eastern is on the same basis, except at Chicago proper.

Mr. DAY. What charges, then, followed this traffic? You say you took it at Chicago and turned it over to the Nickel Plate at Stony Island. What charges followed that?

Mr. BIGELOW. All the charges that came to us.

Mr. DAY. What were they?

Mr. BIGELOW. Whatever the advance charges were of the Western roads, if it originated west of Chicago. If it originated in Chicago, there would probably be no charge except the elevator switching.

Mr. DAY. What Baltimore and Ohio line connects with the Nickel Plate at Painesville?

Mr. BIGELOW. A branch of the Pittsburg and Western road.

Mr. DAY. That is a part of the Baltimore and Ohio system?

Mr. BIGELOW. I can not answer that.

Mr. DAY. What is your information?

Mr. BIGELOW. I do not know anything about it.

Mr. DAY. Now, your line—you had a line extending from Chicago where you took this grain out of the elevator to its point of final destination at Baltimore?

Mr. BIGELOW. Yes, sir.

Mr. DAY. And yet you voluntarily turned over, without any solicitation from the competing line, several thousand tons of traffic—traffic that your rails reached from the point of its origin to the point of its final destination.

Mr. BIGELOW. We turned it over to them without any solicitation of their part.

Mr. DAY. Have you solicited any business or have you offered to carry or agreed or participate in the transportation of traffic coming from points west of Chicago, or coming from Chicago or Chicago Junction points to the Atlantic Seaboard or any intermediate points at less than the then lawful published tariff rate or rates?

Mr. BIGELOW. I have not.

Mr. DAY. Are you acquainted with the firm of Gill & Fisher, or any member of it?

Mr. BIGELOW. I have a very slight acquaintance with—I do not know whether he is a member of the firm or not—one of the gentlemen connected with it.

Mr. DAY. What is his name?

Mr. BIGELOW. Randall.

Mr. DAY. Where does he live?

Mr. BIGELOW. In Baltimore.

Mr. DAY. Are you acquainted with any agent of theirs at Chicago; anybody that purports to represent them?

Mr. BIGELOW. I do not know that they have an agent at Chicago; I never heard of it.

Mr. DAY. Do you know anybody except Randall connected with the concern?

Mr. BIGELOW. I do not.

Mr. DAY. Have you had any conversation with Mr. Randall in regard to concessions below the tariffs filed with the commission?

Mr. BIGELOW. I have not.

Mr. DAY. Or the giving of any preferences to their concern or their traffic?

Mr. BIGELOW. I have not.

Mr. DAY. Or doing for them any service or carrying any traffic free or remitting any charges?

Mr. BIGELOW. No.

Mr. DAY. Or the absorbing of any?

Mr. BIGELOW. No.

Mr. DAY Did they have any warehouse or elevator on the property of the Baltimore and Ohio road?

Mr. BIGELOW. Not that I know of.

Mr. DAY. On a portion of this traffic the waybills or the expense bills which your road turned over to the Nickel Plate with the traffic purport to make the Baltimore and Ohio road the consignor of the freight. Was the Baltimore and Ohio road interested in the property itself?

Mr. BIGELOW. Not in the least.

Mr. DAY. Was the Baltimore and Ohio road or any of its officers, so

far as you are informed, engaged in the grain business or shipping of grain?

Mr. BIGELOW. So far as I know, they are not.

Mr. DAY. There seems to be a hundred cars or more or less of the traffic that you turned over to the Nickel Plate road which are billed as the property of the Union Elevator Company. When you took that traffic from the Union Elevator Company how was it routed?

Mr. BIGELOW. By the Baltimore and Ohio road.

Mr. DAY. Did you have any authority from the consignors to change that and divert it around by another route?

Mr. BIGELOW. No.

Mr. DAY. When you turned it over to the Nickel Plate road, what did you say about turning it back onto the Baltimore and Ohio road at Painesville?

Mr. BIGELOW. What did I say to whom?

Mr. DAY. What did you say to anybody? What direction did you give as to how it should get back to the Baltimore and Ohio road?

Mr. BIGELOW. I presume that I suggested to Mr. Briggs, of the Nickel Plate, that the traffic be surrendered back to us at that point.

Mr. DAY. Why?

Mr. BIGELOW. The Nickel Plate road proper could not make a delivery in Baltimore.

Mr. DAY. They can make a delivery to other roads.

Mr. BIGELOW. Going to Baltimore?

Mr. DAY. Yes, sir.

Mr. BIGELOW. I never heard of it.

Mr. DAY. They can deliver to the Lehigh Valley.

Mr. BIGELOW. That does not go to Baltimore.

Mr. DAY. Their connections go to Baltimore. The traffic could go by other routes—it could go by the Pennsylvania—there were other lines open to him. Why did you direct him to give it over to the Baltimore and Ohio at Painesville?

Mr. BIGELOW. It is the point where we intersect their line.

Mr. DAY. Will you state why the property was billed as the property of the Baltimore and Ohio Railroad?

Mr. BIGELOW. It was not so billed, as I understand it. It is customary on all waybills to indicate the delivering railroad.

Mr. DAY. The bills which were turned over to the commission by the Nickel Plate road at Chicago—the bills for this traffic which your road turned over to them—show on their face the names of the consignor and consignee, the number of the car and the initial of the car as received by them, and under the name of "consignor" it gives the name on a part of this traffic as the Baltimore and Ohio Railroad; under the title of "name of car" it gives the number of car and Baltimore and Ohio road. These were your own documents.

Mr. BIGELOW. It has no significance, so far as it relates to the ownership of the property.

Mr. DAY. Why was Baltimore and Ohio inserted?

Mr. BIGELOW. Simply as an identification to the Nickel Plate.

Mr. DAY. The Nickel Plate already had on that paper the initial of the car, the number of the car, the point at which it received it from you, and that it originated at Chicago. This name of owner was in addition.

Mr. BIGELOW. It does not make any difference. It has no significance in the sense you mean as proprietor of the property.

Mr. DAY. I am not giving a meaning to it. I am asking why the Baltimore and Ohio was put in.

Mr. BIGELOW. We were the delivering line, and, following the custom which prevails when one road transfers to another, we make a transfer bill. Let me ask, in the column which reads "Consignor and consignee," what do you find—"Order of Snydecker, Fife & Co., notify Gill & Fisher?"

Mr. DAY. In some instances.

Mr. BIGELOW. Do you not in every instance?

Mr. DAY. No.

Mr. BIGELOW. It may be a clerical error.

Mr. DAY. No; it occurs too often. Here are two columns where the Union Elevator Company is named as consignor, then the Chicago O'Neill Company is consignor; there are four cars in which the Baltimore and Ohio Railroad is consignor.

Mr. BIGELOW. The Baltimore and Ohio did not know the names of the consignors. It came from Western railroads. For the nonce we were simply consignors.

Mr. DAY. Here are five cars that did not come from Western railroads [referring to paper].

Mr. BIGELOW. Where did it come from?

Mr. DAY. Your bills state that it came from Chicago.

Mr. BIGELOW. I do not know. I have not the data before me. I can explain it when I see that.

Mr. DAY. I may have asked you this question, Mr. Bigelow, before, but I will ask it again. I do not think I put it in this form. Have you had any instructions or any directions from any of your official superiors or from anybody representing the Baltimore and Ohio Company or the receivers at any time since the road has been in the hands of receivers, any directions to get traffic by concessions of any nature or description from the published rates, the lawful published rates filed with the Interstate Commerce Commission?

Mr. BIGELOW. You asked me that question before, but I will answer it again in the negative. No; I have not.

Mr. DAY. Nor any intimation that you were expected to get it?

Mr. BIGELOW. No, sir.

Mr. DAY. That it was required of you?

Mr. BIGELOW. No, sir.

Mr. DAY. And so far as your relations to the traffic transported by the Baltimore and Ohio road are concerned, you believe that you have absolutely complied with the law?

Mr. BIGELOW. So far as my transactions are concerned, did I understand you to say?

Mr. DAY. Yes, sir; in all things.

Mr. BIGELOW. Yes, sir.

Mr. DAY. And that you have not solicited traffic at less than the lawful rates by any agreement, expressed or implied, that favors should be enjoyed on the traffic or on account of the ownership of the traffic?

Mr. BIGELOW. I have not.

Mr. DAY. Do you know of any instances in which car demurrage has been remitted to a shipper or consignee or consignor?

Mr. BIGELOW. I do not recall specifically; there may have been some isolated case where the circumstances seemed to warrant it.

Mr. DAY. Has it occurred in any instances that has come within your information as a concession to a shipper, or on account of shipments of traffic, by means of which the rate of transportation has been lessened?

Mr. BIGELOW. No.

Mr. DAY. Has anybody had free storage?

Mr. BIGELOW. What class of free storage—elevator storage?

Mr. DAY. Any kind where you have charged others under like circumstances or similar circumstances?

Mr. BIGELOW. No, sir; most emphatically no. Our company does not enjoy any facilities that would admit of anything of the kind.

Mr. DAY. Has your company absorbed any switching expenses that would otherwise be charged up against the traffic?

Mr. BIGELOW. Let me understand that question more clearly.

Mr. DAY. Switching expenses follow the traffic the same as other charges, do they not, in instances?

Mr. BIGELOW. Well, you understand, there are many peculiar conditions existing at Chicago where switching is absorbed under natural and existing conditions.

Mr. DAY. As a part of the rate?

Mr. BIGELOW. As a part of the rate.

Mr. DAY. Now, in instances where traffic is switched to or from an elevator, that would be charged for—that would be placed as a burden on the traffic. Have you paid that, or absorbed it, so as to give any shipper, or that particular traffic, the benefit of free switching?

Mr. BIGELOW. No; we have not.

Mr. DAY. By any device whatever, has any shipper obtained a preference, so far as you know, over any other shipper?

Mr. BIGELOW. So far as I know, they have not.

Mr. DAY. Or has any individual or any corporation obtained a preference?

Mr. BIGELOW. So far as I know, they have not.

Mr. DAY. You take the traffic that comes to you through the Chicago and Northern Pacific—that road, whatever its name may be—from the Chicago sugar refinery. What is the switching charge for switching from that sugar refinery to your road?

Mr. BIGELOW. I do not believe that I can recall that, Mr. Day.

Mr. DAY. Has your road paid any proportion of that switching charge, or agreed to?

Mr. BIGELOW. To whom?

Mr. DAY. Well, either to the Chicago Sugar Refining Company or the owner of the traffic, or anybody representing the consignor or the consignee or the owner?

Mr. BIGELOW. No, sir.

Mr. DAY. Or to the Chicago and Northern Pacific? Are you aware that the Chicago and Northern Pacific has acted as intermediary for the payment of it?

Mr. BIGELOW. No.

Mr. DAY. Has any part of it been shrunk out?

Mr. BIGELOW. Not that I know of.

Mr. DAY. Has any of this traffic or any of the traffic carried by your road during the first three months of this year been carried at an export rate differing from the local rate when the traffic was really domestic traffic?

Mr. BIGELOW. No, sir.

Mr. DAY. Have you had any conversation with Mr. Randall respecting concessions on any of the traffic billed to them or consigned to them?

Mr. BIGELOW. None whatever.

Mr. DAY. When did you leave Chicago, Mr. Bigelow?

Mr. BIGELOW. When did I leave Chicago?

Mr. DAY. Yes, sir.

Mr. BIGELOW. About the 20th of May, I think.

Mr. DAY. You have not been to Chicago since?

Mr BIGELOW. No.

Mr. DAY. Have you had any agreement or arrangement or any understanding with Banks, or Chance, or Whitehead for a participation with them, or either of them, in the making of concessions below the published tariff rates for the service actually performed?

Mr. BIGELOW. I have not.

Mr. DAY. Have you had any conversation with either of them upon that subject within the past three months?

Mr. BIGELOW. Not that I recall.

Mr. DAY. Have you had any conversation with anybody purporting to represent the Washburn-Crosby Milling Company in regard to concessions?

Mr. BIGELOW. I have not.

Mr. DAY. Or the Pillsbury-Washburn Company?

Mr. BIGELOW. I have not.

Mr. DAY. Or the Consolidated Company?

Mr. BIGELOW. I have not.

Mr. DAY. Did you with Mr. Gallagher, of Minneapolis?

Mr. BIGELOW. I did not.

Mr. DAY. Has any claim been presented to you or come through your office in regard to the transportation of flour in which your road participated?

Mr. BIGELOW. From whom or where? Is that following that other question?

Mr. DAY. Yes, sir.

Mr. BIGELOW. No such claim was ever presented to me.

Mr. DAY. Has any been presented to anybody that you have any information respecting?

Mr. BIGELOW. No, sir.

Mr. DAY. Have you had any arrangement or agreement or understanding with either of the railroad men that I have named whereby your road was to give them a greater share in the through rate or the Chicago-Atlantic seaboard rate than the 8 per cent you have mentioned?

Mr. BIGELOW. I have had no such conversation with the parties you named.

Mr. DAY. Or with anybody?

Mr. BIGELOW. Or with anybody.

Mr. DAY. Are you informed that any such arrangement or arrangements of that nature have been made with them or anybody representing them?

Mr. BIGELOW. With any of the roads?

Mr. DAY. With any of the roads mentioned.

Mr. BIGELOW. No, sir; I have not.

Mr. DAY. So far as you have heard, the full 8 per cent and no more has been paid to the Chicago, Hammond and Western?

Mr. BIGELOW. So far as I have heard or know.

Mr. DAY. And, so far as you have heard, they have received it and retained it in their treasury?

Mr. BIGELOW. So far as I know or have heard.

Mr. DAY. What is the proportion of the Chicago–seaboard rate that the Elgin, Joliet and Eastern was to have on traffic they turned over to your road?

Mr. BIGELOW. Eight per cent, I believe.

Mr. DAY. And the three I's?

Mr. BIGELOW. I can not answer that specifically. I do not recall it. The divisions are published. Speaking from memory, I think about 16 per cent. That is only a guess.

Mr. DAY. The three I's?

Mr. BIGELOW. Yes, sir.

Mr. DAY. Why should they receive so much more than the others—where do they deliver it to you?

Mr. BIGELOW. At Walkerton, Ind.

Mr. DAY. How far is that east of Whiting, approximately? I am asking for your recollection on that.

Mr. BIGELOW. I might as well be accurate about it. If you have an Official Guide, I can give it exactly. [After examining Official Guide.] About 49 miles.

Mr. DAY. Who is there at Chicago that would have power to make concessions in rates?

Mr. BIGELOW. Who is there at Chicago that would have power to make concessions?

Mr. DAY. At Chicago or the junction points—any of them.

Mr. BIGELOW. No one that has power to do that. I desire to add that if anyone had the power I would.

Mr. DAY. Mr. Bigelow, what is that bill [handing paper to witness] B-19—your number or their number?

Mr. BIGELOW. Their serial number.

Mr. DAY. This appears to be a consignment from Rockford, Ill., to Baltimore, Md., carload of oil cake, 28,000 pounds, 17-cent rate, I. C. car 198. Where is that rate from and to—that 17-cent rate?

Mr. BIGELOW (after examining paper). From High Lawn to Locust Point, Baltimore.

Mr. DAY. The charges were prepaid, were they not?

Mr. BIGELOW. Yes, sir; prepaid. It is in the prepaid column.

Mr. DAY. I think that is all I wish to ask Mr. Bigelow to-day.

Mr. BOND. You will give him a memorandum of what you want him to obtain, Mr. Day?

Mr. DAY. Yes, sir.

The CHAIRMAN. Mr. Bond, do you want to ask him any questions?

Mr. BOND. No, sir; I think not.

At 1 o'clock p. m. the commission adjourned.

JAMES MCCREA, a witness, having been duly sworn, testified as follows:

Mr. DAY. You may state what position you occupy, Mr. McCrea, with the Pennsylvania Company.

Mr. MCCREA. Vice-president of the Pennsylvania Company and the Pittsburg, Cincinnati, Chicago and St. Louis road, generally known as the Pennsylvania lines west of Pittsburg.

Mr. DAY. Will you state what particular branch of the work of the Pennsylvania lines comes under your supervision or jurisdiction?

Mr. MCCREA. As the first vice-president, I represent the president in his absence, and I have supervision over all departments of the lines west of Pittsburg.

Mr. DAY. Who exercises final supervision or control over the auditor or accounting branch of the Pennsylvania lines?

Mr. MCCREA. The third vice-president did. He died about a week ago.

Mr. DAY. What was his name?

Mr. MCCREA. John E. Davidson. At the time I was subpœnaed the marshal also had a subpœna for him, but he was very ill at that time and died a few days afterwards.

Mr. DAY. His successor has not yet been named?

Mr. MCCREA. No, sir.

Mr. DAY. Who is acting now in the supervision of that work?

Mr. MCCREA. The work is divided up at present between the second and fourth vice presidents. There is an ad interim there before the matter will be settled, I presume. The board meeting will hardly be apt to be held until some time in the fall.

Mr. DAY. Who has charge of the contracting for the transportation of traffic from Chicago common points, or junction points, or points west thereof through to the Atlantic Seaboard?

Mr. MCCREA. It is under the general charge of the freight traffic manager, Mr. McCabe.

Mr. DAY. Who is his immediate superior officer?

Mr. MCCREA. He reports to me.

Mr. DAY. If in the transportation, or in respect to the transportation, of traffic over the Pennsylvania lines, any of them, singly or acting together, any concessions were made or have been made in the past six months or eight months from the published tariffs at the time or any preferences have been granted to any individual or corporation in respect to any transportation, under whose jurisdiction would that come?

Mr. MCCREA. It would come through me.

Mr. DAY. And subordinate to you, if any engagements, agreements, or contracts of that nature have been made, who, next below you, would exercise the authority in the premises?

Mr. MCCREA. It would go through the freight traffic manager.

Mr. DAY. You mean if such engagements of that kind had been made they would be made by him or his subordinates?

Mr. MCCREA. Exactly.

Mr. DAY. By him?

Mr. MCCREA. Or his subordinates.

M. DAY. What official relation do you sustain to the Pittsburg, Cincinnati, Chicago and St. Louis road?

Mr. MCCREA. Vice president.

Mr. DAY. You are vice-president?

Mr. MCCREA. Yes, sir.

Mr. DAY. Who is the president?

Mr. MCCREA. Mr. Frank Thomson.

Mr. DAY. Is he president of all the Pennsylvania lines?

Mr. MCCREA. He is president of the Pennsylvania Railroad Company and also of the Pennsylvania lines west. The organizations are separate with the exception of the president.

Mr. DAY. Did you see the answer that was filed by your company in this matter in this case under consideration now—the schedule or the answer?

Mr. MCCREA. Yes, sir.

Mr. DAY. It was made up under your supervision, was it?

Mr. MCCREA. No, sir; just simply under my direction—in a general way, yes, sir.

Mr. DAY. That is what I meant. You were consulted in regard to it?

Mr. MCCREA. The notice was served on me, I think.

Mr. DAY. What relation do you sustain officially to what is known

as the Union Fast Freight Line—the Star Union—what is its corporate name? Is it a corporation?

Mr. McCREA. No, sir; the Star Union Line is simply a bureau through which the business of the Pennsylvania Railroad and the Pennsylvania lines, the through business, the interchange of business, is handled. Originally it was a corporation, and, I think, in 1873 it was bought out and the trade-mark was retained.

Mr. DAY. It is, then, simply an auxiliary agency?

Mr. McCREA. A bureau.

Mr. DAY. Its officers are paid by whom?

Mr. McCREA. The expenses are divided up between the lines east and west of Pittsburg. When I speak of east and west I mean east and west of Pittsburg.

Mr. DAY. The expenses are divided among the lines that compose the Pennsylvania system?

Mr. McCREA. Yes, sir.

Mr. DAY. There are no other corporations that are not auxiliary or part of your system that contribute to the expenses of the Star Union Line?

Mr. McCREA. I think none.

Mr. DAY. The point I desire to get at is to establish that it is one of your agencies.

Mr. McCREA. Yes, sir.

Mr. DAY. Exclusively yours?

Mr. McCREA. Yes, sir; that is right.

Mr. DAY. The Star Union Line has its independent auditor, has it not?

Mr. McCREA. Yes, sir.

Mr. DAY. Generally speaking, what is the purview of his work?

Mr. McCREA. He is practically the head of the clearing house between the two companies—that is, between the lines east and west.

Mr. DAY. Does that agency collect the charges and tolls for the transportation of traffic?

Mr. McCREA. Yes, sir.

Mr. DAY. It does the collecting?

Mr. McCREA. Yes, sir; of course, it is the agency. It is really a very difficult matter to describe.

Mr. DAY. Does the Star Union Line agency actually collect money for the transportation of traffic that goes by that line?

Mr. McCREA. No, sir.

Mr. DAY. Does that agency handle any money of the Pennsylvania companies, or either of them, or any of its auxiliary companies, excepting the salaries of the officers of the Star Union Line?

Mr. McCREA. No, sir; it is just simply an accounting department, from the reports of which the moneys between the companies are divided.

Mr. DAY. If any preference or advantage in the nature of a rebate or any other device is enjoyed or made in respect to traffic by the Star Union Line, is such preference, discrimination, rebate, or advantage made by the officers of that line or any of the agents of that line—the Star Union Line?

Mr. McCREA. No, sir.

Mr. DAY. Then it is purely and simply an auxiliary business agency that does nothing but arrange for the transportation of traffic and keep the book accounts in respect to that with the various lines that make up the Pennsylvania system?

Mr. McCREA. Yes, sir.

Mr. DAY. Do you exercise, or have you exercised in the past eight months, any control over the traffic or the charges finally received for the transportation of traffic east of Pittsburg?

Mr. MCCREA. No, sir.

Mr. DAY. Your jurisdiction is confined to west of Pittsburg?

Mr. MCCREA. Entirely.

Mr. DAY. In the answer and schedules filed by the Pennsylvania system—meaning the entire system, using the word in its broadest sense—it appears that, excepting an infinitesimal quantity, all grain or its products carried by your system went by what is known as the Star Union Line?

Mr. MCCREA. Yes, sir.

Mr. DAY. I did not quite comprehend from the answers made how any of the traffic should go by any other than the Star Union going over the Pittsburg, Fort Wayne and Chicago and the Pennsylvania or the Pan Handle and the Pennsylvania. Can you explain how that comes to be divided up?

Mr. MCCREA. I will try to. In the first place, as I explained, the Star Union Line is a bureau which serves as a clearing house as between the lines east and west of Pittsburg. There was some business that would seek the seaboard perhaps by Columbus—I do not recollect those places, but we will say Columbus—where it may have been delivered to the Norfolk and Western; or Cincinnati, where it might have been delivered to the Chesapeake and Ohio or some other Eastern line; or Louisville, where it would have been delivered to some other connection seeking the seaboard through that gateway. Then, there might be some business delivered to the Western New York and Pennsylvania, at Newcastle, or, in a general way, business could be delivered to a connecting line for the seaboard other than the Pennsylvania Railroad, that would not appear in the records of the Union Line; again, there might be some business that was delivered through an agency which was not a Union Line agency. Most of the important agencies on the line of the road are Union Line agencies as well as purely railroad agencies. Then, it is possible that a mistake of an agent might be made. He might bill on the wrong manifest, and the reports that were made by the Pittsburg, Fort Wayne and Chicago, and the Pittsburg, Cincinnati, Chicago and St. Louis companies, were simply to cover in that class of business that had been forwarded but were not comprised in the Union Line.

Mr. DAY. Does the Star Union Line take traffic destined for Norfolk and Newport News?

Mr. MCCREA. No, sir.

Mr. DAY. Does it take traffic that goes off the rails of the Pennsylvania system, say, for example, traffic for Boston?

Mr. MCCREA. Yes, sir.

Mr. DAY. I understood you to say that you examined this schedule that was made out?

Mr. MCCREA. Well, in a very general way. There were sixty or seventy sheets of it and I just glanced it over, not really enough to say that I understand much about it.

Mr. DAY. In respect to any of the traffic that was carried by the Star Union Line over your rails or by either of the companies of which you are an officer, were any preferences granted to anybody?

Mr. MCCREA. Not to my knowledge?

Mr. DAY. Have you any information on the subject?

Mr. MCCREA. No, sir; I have no information on that subject.

Mr. DAY. Have you any reason to believe that any shipper, any consignor, or any consignee enjoyed any advantage?

Mr. MCCREA. None, sir.

Mr. DAY. Or preference?

Mr. MCCREA. None, sir.

Mr. DAY. If anything of value was paid to or granted to any person in respect to any of this traffic, what officer of the Pennsylvania system would necessarily be informed of it, no matter by what device it may have been done?

Mr. MCCREA. I should say that the traffic manager would, and eventually I would.

Mr. DAY. Have you any information that any commissions to secure traffic have been paid by either of the companies with which you are connected?

Mr. MCCREA. No, sir.

Mr. DAY. Any commissions on account of traffic?

Mr. MCCREA. No, sir.

Mr. DAY. Or any rebates?

Mr. MCCREA. No, sir.

Mr. DAY. Anything in the nature of free storage?

Mr. MCCREA. No, sir.

Mr. DAY. You remember the press reports in regard to rate cutting and general demoralization of rates in February and March of this year?

Mr. MCCREA. Yes, sir.

Mr. DAY. The press—the Chicago press notably, and possibly the New York press, too—made allegations naming certain roads? You perhaps saw those reports?

Mr. MCCREA. No; I did not. The simple fact is that they are always full of it, day in and day out, and I pay very little attention to them.

Mr. DAY. It was alleged that there were certain roads that were not getting the share of the traffic which the officers felt that they ought to receive, and that secret devices were employed for the purpose of securing traffic—devices that were not named in the tariff sheets filed with the commission.

Mr. MCCREA. You can see that once a week: every week the statistics are usually reported; you can see reports of that kind in the paper. It has been so ever since I have known of it.

Mr. DAY. Have you any information that led you to believe that any of your subordinates or any of the officers of the Pennsylvania system were making any concessions to secure traffic?

Mr. MCCREA. No; I have not, sir.

Mr. DAY. It was alleged in some of the papers that after a time the Pennsylvania lines were carrying what was called an abnormal percentage of the traffic going east by way of Chicago gateways. As a result of that, or as a fact, did your system—any of your lines, the lines with which you are connected—turn over to your competitors any portion of your traffic?

Mr. MCCREA. Why, no, sir; under the general percentages which were supposed to be worked out—the balances that are kept of the statistics—we were, I suppose, at the first of the year in the neighborhood of 180,000 tons behind the percentage we were supposed to carry. We received business from other roads on that account.

Mr. DAY. To make up your deficit?

Mr. MCCREA. Yes, sir.

Mr. DAY. What roads?

Mr. McCREA. I do not recall them all now; the Baltimore and Ohio among others. They turned over to us a lot of business.

Mr. DAY. Can you mention any others?

Mr. McCREA. No; because the difficulty with our location is that we are the only two roads that pass through the gateway at Pittsburg, and when either of us get short it is very difficult to even up; that is, to make any such turning over as you speak of. I do not recall that any other road turned over anything to amount to anything—I do not recall it.

Mr. DAY. Approximately, or speaking roughly, from the information you have, what was the extent of the traffic that the Baltimore and Ohio turned over to you?

Mr. McCREA. Really, I can not tell you now; I do not remember.

Mr. DAY. Where was it turned over?

Mr. McCREA. At Chicago.

Mr. DAY. Would you cause a statement to be made and sent to the commission of the time and place and character of the traffic turned over to your road by the Baltimore and Ohio during the year 1897?

Mr. McCREA. Certainly; I do not suppose you want it in detail?

Mr. DAY. I think for the purpose I have in mind that I should like to have the number of cars, the weight in gross, the character of the traffic, and about the time when and where it was turned over by the Baltimore and Ohio.

Mr. McCREA. Perhaps I can give you a little more information; probably enough to avoid that. The business was turned over to us at Chicago—I think it was all at Chicago; possibly some at Chicago Junction points, brought by us to Pittsburg and turned over to the Baltimore and Ohio at that point—turned back to them at Pittsburg. They are the only other east-bound road out of Pittsburg. The Vanderbilts and the Erie have a line, but it would be out of the way to bring it down there and haul it out. They are the only road with which there could be an evening of that kind.

Mr. DAY. Who arranged for that traffic to be turned over to you, Mr. McCrea?

Mr. McCREA. My recollection is that the receiver asked me. He said he was over and we were short, and asked me if I would take it, and I said I would.

Mr. DAY. Who do you mean by the receiver?

Mr. McCREA. Mr. Murray.

Mr. DAY. Of the Baltimore and Ohio?

Mr. McCREA. Yes, sir.

Mr. DAY. Where was that conversation had?

Mr. McCREA. It was not any conversation at all. My recollection is that it was either by letter or telegram.

Mr. DAY. About when?

Mr. McCREA. Very early in the year.

Mr. DAY. Probably the month of February?

Mr. McCREA. I should say in January.

Mr. DAY. During the first two months of this year were you satisfied—were you led to believe—that traffic was being diverted from your rails by preferences granted by some of your competitors?

Mr. McCREA. No; I do not think that I was led to believe that.

Mr. DAY. It was stated that some of your competitors complained that your lines in the months of February and March, possibly April, were carrying what they regarded as an abnormal volume of traffic, and that it was the result of some secret preferences or devices.

Mr. McCREA. Why, I do not recollect the newspaper statements that you have given in a general way exactly as you put them. My recollection was that the statements were that the Pennsylvania lines, or the Pennsylvania, having lived up so religiously to the law, as compared with its neighbors, had suffered so badly they were said to have gone in.

Mr. DAY. That is what I meant—that that was alleged.

Mr. McCREA. Oh, yes, sir; it was all alleged. Those things are alleged always.

Mr. DAY. As a matter of fact, did the Pennsylvania system or any of its auxiliaries, so far as you have any information, secure traffic by granting preferences or advantages to individuals?

Mr. McCREA. No, sir.

Mr. DAY. Or to corporations?

Mr. McCREA. No, sir.

Mr. DAY. Which the general shipping public did not enjoy at that time?

Mr. McCREA. No, sir.

Mr. DAY. After your system acquired a much larger volume of traffic than you had enjoyed earlier in the year did you deliver over to any of your competitors any portion of that?

Mr. McCREA. No, sir; we are behind to day on the evening-up process. We are to-day, I should think, over 50,000 tons behind.

Mr. DAY. Taking the business of the year?

Mr. McCREA. No; taking it from the date when we agreed to even up.

Mr. DAY. Do I understand you to say that if you received now 50,000 tons that would make you good, according to the agreement, or whatever it was?

Mr. McCREA. About that, I should say—I am speaking roughly from memory—the last report I looked at I think was to that effect.

Mr. DAY. Personally have you made any agreements with shippers or the agents of shippers respecting the reduction or increase of tariff charges from Chicago or points west of Chicago to the seaboard to become operative in the future?

Mr. McCREA. No, sir.

Mr. DAY. You probably saw some statements of that kind made also?

Mr. McCREA. No; I did not see any of that kind.

Mr. DAY. Have you made any arrangement or agreement or had a tacit understanding with consignors or shippers or consignees of grain or its products?

Mr. McCREA. No, sir.

Mr. DAY. With a concern known as Bartlett, Fraser & Co., of Chicago?

Mr. McCREA. No, sir.

Mr. DAY. Or Armour?

Mr. McCREA. No, sir.

Mr. DAY. Or Mr. Charles Counselman?

Mr. McCREA. No, sir; the only agreement—I filled a copy with the answer of my agreement with Mr. Counselman; that is for the use of the elevator.

Mr. DAY. Has there been any other agreement, either written or oral, or a tacit understanding with Mr. Counselman than the one you filed?

Mr. McCREA. There was an oral agreement; yes, sir.

Mr. DAY. When was that made?

Mr. McCREA. At the time the contract was made.

Mr. DAY. In respect to what was that agreement?

Mr. McCREA. The contract recites the terms under which he will

operate the elevator, and the transfer charges as recited therein were those that where agreed upon by the roads as being fair, and I volunteered the statement to him that if he could show me that any other railroad was paying more for business transferred in the houses there that I would pay him the same, and he has never made any claim for it or given me any evidence whatever that any of the other railroads did, and nothing hasb een paid to him. 8

Mr. DAY. He has never made any claim?

Mr. MCCREA. Never made any claim.

Mr. DAY. Neither he nor anybody acting in his behalf?

Mr. MCCREA. No, sir; not that I know of.

Mr. DAY. That was made contemporaneously with the signing of the contracts or subsequently?

Mr. MCCREA. Oh, no; it was made at that time. When we decided that the situation had developed so that it was absolutely necessary for us to have an elevator there, and I had a talk with him to know whether he would operate it, and also on what terms, I made the contract, a copy of which I forwarded, and he made the statement that he thought some of the other elevators were operated on more advantageous terms. I volunteered the statement I made to you.

Mr. DAY. Is that the only understanding, tacit or expressed?

Mr. MCCREA. That is all, sir.

Mr. DAY. That has been had between any of the companies you represent, so far as you know, and Mr. Counselman?

Mr. MCCREA. Yes, sir.

Mr. DAY. Has any payment been made to him by any of the companies that you are connected with, by any corporation that you are connected with, or by any of your subordinates other than the amounts named in the written contract?

Mr. MCCREA. No, sir; none.

Mr. DAY. Has he been paid any moneys by any company with which you are connected, or by any of your subordinates, upon any account other than the dollar and dollar and a half actually named in the contract and upon grain actually transferred in that warehouse?

Mr. MCCREA. No, sir. He may have been paid at some other elevator, you know. The same charges are paid there, but no more.

Mr. DAY. Do you allow him transfer charges on grain that is transferred into your cars from other elevators?

Mr. MCCREA. Only as we would anybody else at any other elevator. There is a regular schedule of them.

Mr. DAY. Do you allow all shippers by your lines $1.50 a car on oats?

Mr. MCCREA. I think so. I am not up in the detail of those questions as our agents in Chicago are.

Mr. DAY. Who knows?

Mr. MCCREA. Mr. Randall and Mr. Borner, and those people there. What I want to say to you clearly is, that when it comes to these questions of just how much per car, I have not that information. I have too many subjects generally to keep that detail in mind, but I do want to say that whatever has been paid has been simply that which is current, and that which is proper and authorized.

Mr. DAY. My question went to the point as to whether we were speaking of your contract relations with Mr. Counselman.

Mr. MCCREA. Yes, sir.

Mr. DAY. Whether he received larger transfer charges than other individuals who shipped by your route or routes, or whether he received transfer charges or allowances in instances where another shipper did not?

Mr. McCREA. No, sir; he received just exactly what the contract that is filed with you calls for, and those rates are what would be called the current rates at Chicago.

Mr. DAY. Have you any other elevators or storehouses that are leased to any other shippers?

Mr. McCREA. No, sir.

Mr. DAY. Or do you let any of your grounds to any other shipper or elevator man?

Mr. McCREA. No, sir.

Mr. DAY. This Pennsylvania transfer house—that is the name of it, is it not?

Mr. McCREA. Yes, sir.

Mr. DAY. That stands on your ground?

Mr. McCREA. Yes, sir.

Mr. DAY. Which of your roads built it?

Mr McCREA. It stands on the ground of the Pan Handle road, and is owned by that company. The Fort Wayne Company pays a rental for its use of it?

Mr. DAY. Its use of what?

Mr. McCREA. The business that it gets off. You see we have two roads, and to avoid building two elevators we built one at Fifty-ninth street, where there is a cross connection to the Fort Wayne road. Now, that money for building that elevator and the ground had to be supplied by the Pan Handle Railroad. The tracks and so on that are outside of the elevator, and which are not leased to Mr. Counselman, but belong to the railroad company—the charges for that and the interest on the cost of the elevator itself are charged against the two companies, and the rent received is credited against that, and the balance is divided between them according to the proportion of business done by each in the house.

Mr. DAY. When did you build that elevator?

Mr. McCREA. It was finished about the 1st of January.

Mr. DAY. What is its capacity—its transfer capacity?

Mr. McCREA. My recollection is about 125 cars a day. I am not sure whether that is running day and night or day only.

Mr. DAY. Has it any storage capacity independent of the 125 cars transfer space?

Mr. McCREA. I think for about 100 cars; I am not certain. It has storage capacity, but only about enough to do a day's business to avoid stopping work. It is not what you would call a storage elevator.

Mr. DAY. I only wanted to get at the extent of its storage capacity and its transfer capacity. You think it has a day's capacity independent of transfer—about twenty-five hours margin in the way of storage?

Mr. McCREA. I think that is it. I would be very glad to give you any detail you want.

Mr. DAY. Roughly speaking, what was the cost of that elevator?

Mr. McCREA. Eighty thousand dollars was the cost outside of the tracks.

Mr. DAY. Did that cover the cost of machinery?

Mr. McCREA. It covered the cost of everything. My recollection is that when the contract was made, or the agreement was made to operate, we did not know exactly what the cost was going to be; it was left blank; it was originally estimated at $60,000. Then we made some changes and improvements in it and, as I recollect it, our people figured the cost to be somewhere about $81,000 or $82,000, and we sent that to Mr. Counselman to go over, and he came back and struck out one or two items—something in connection with the water supply which

he said ought not to be charged against it, and a lot of small items, I do not remember what they were—and he reduced it, he claims, to between $78,000 and $79,000. I did not have the time to attend to it and I wrote to him and said we will split this difference and call it $80,000. He agreed to that, and that was the price.

Mr. DAY. Has the Panhandle or the Fort Wayne or the Pennsylvania Company, or any of its auxiliaries or agencies, paid anything to Mr. Counselman on any other account than that of transfer?

Mr. MCCREA. I think I answered you that before.

Mr. DAY. I only intended to cover it; I did not intend to doubt what you said.

Mr. MCCREA. No, sir; we have not.

Mr. DAY. Do either of these companies furnish motive power to these elevators?

Mr. MCCREA. What do you mean by "motive power?"

Mr. DAY. Power to operate it.

Mr. MCCREA. No, sir.

Mr. DAY. I found an elevator or two in Chicago where the railroads do that.

Mr. MCCREA. There is nothing in it except what you see in the contract, and the verbal statement to him if he could show me that other people were getting more than he did that I would pay him that.

Mr. DAY. You know nothing of the system that prevails on the seaboard, or the practice that prevails on the seaboard, respecting elevators or charges for elevators?

Mr. MCCREA. Not as of to-day; I do not.

Mr. DAY. I think I understood you to say that the only advantage which Mr. Counselman enjoys by shipping by your route is what he gets out of this Pennsylvania transfer house?

Mr. MCCREA. Yes, sir.

Mr. DAY. And so far as you have any information, no shipper—no person enjoys any advantage over the public generally in the transportation over your lines of grain or its products?

Mr. MCCREA. No, sir.

Mr. DAY. Or has during the period covered by this inquiry—since January 1?

Mr. MCCREA. No, sir.

Mr. DAY. I mean by that, that neither directly or indirectly has the cost of transportation been lessened below that stated in your published tariffs as filed with the commission?

Mr. MCCREA. Not that I know of; no, sir.

Mr. DAY. The traffic charges on corn billed for export or designated for export during a portion of this period was carried at 5 cents a hundred pounds below that charged for grain which was designated for domestic use at the seaboard?

Mr. MCCREA. It was carried below. I do not know how much.

Mr. DAY. What evidence did you have or did you require that the corn was to be exported which induced you or your companies to carry it below the domestic rate?

Mr. MCCREA. Only the fact—I do not know that I can answer that except in a general way. You are getting down into detail.

Mr. DAY. Of course you do not have anything to do with the actual performance of the work. You have a supervision of the work?

Mr. MCCREA. No, sir; I do not really know much about it except in a general way. I know the way it is done. Corn there comes to us from beyond, or is reported to us for export, and we send it, and our

agents in the East, if it is not exported, they correct the billing back, and if it is, it goes forward.

Mr. DAY. Your understanding is that your agents at the seaboard exercise a surveillance over it in order to ascertain whether it is exported?

Mr. MCCREA. Yes, sir; I so understand that.

Mr. DAY. Mr. Joyce, in making answer for the Pennsylvania Railroad Company, says that these shipments were delivered either to the elevators or to the steamships in so far as they were for export. In the case of grain shipments for export the identity is lost immediately as the grain is placed in the elevators, and necessarily the knowledge of the company's agent also ceases at the time of such delivery to the elevators. I should like to have you state what information came to you that induced you to carry corn identical in grade, say, from Chicago junction points to Philadelphia, New York, or Baltimore, charging one less per hundred pounds because it was said to be for export than you did for the other which was said to be for domestic use. I supposed that you had supervision that would enable you to know what was done that you might have some information on which your subordinates acted in accepting less for one consignment of grain than for the other when it was graded the same and carried in the same train.

Mr. MCCREA. I do not want the answer which I made to your former question to be construed as differing from that of Mr. Joyce. He knows about it much better than I do, but I do not see anything inconsistent in the two answers, because while the identity of a particular carload of grain is certainly lost in the elevator the amount of grain that goes in or out is divided as between domestic and export.

In further answer, I would say that we have no means of checking the destination of the grain beyond the agency of the Union Line, which is the joint bureau between the lines east and west of Pittsburg for transacting that character of business. It is received by their agent in the West and delivered by their agent in the East, and when changes are made they are reported back from the delivering agent to the receiving agent. I think that covers it.

Mr. DAY. Have you any information which leads you to believe that any corporation with which you are connected pays to any other corporation money, or credits it on any account, for the transportation of traffic carried by any other concern—any other company—than the one which actually pays the money or makes the credit?

Mr. MCCREA. I will say no, sir; I have no such information.

Mr. DAY. Have you, during the past eight months or a year, had contractual relations in respect to traffic with the belt lines of Chicago, or any of them?

Mr. MCCREA. No; I think not. I think we have divisions. We have divisions, you know, with those lines; that is, a division of the pro rate, as we have with almost everybody else. Is that what you mean?

Mr. DAY. That partially answers my question.

Mr. MCCREA. Of course, we have that; yes, sir.

Mr. DAY. With all of them?

Mr. MCCREA. I expect we do; I do not really know.

Mr. DAY. Who makes those divisions—who agrees to them?

Mr. MCCREA. They are done by the general freight agent. We have a traffic manager and two general freight agents. That would come within the duties of the general freight agent.

Mr. DAY. Who are they?

Mr. MCCREA. Of the Pan Handle, J. B. Hill.

Mr. DAY. Where is his office?

Mr. MCCREA. At Columbus. With the Fort Wayne, Mr. James P. Orr. He is at Pittsburg. Mr. McCabe is the traffic manager. If you want to know whether, through that medium, we have been manipulating traffic, I will tell you right now that we have not.

Mr. DAY. I think that is all I desire to ask.

Mr. MCCREA. All right, sir. I explained to Commissioner Morrison that about three or four days ago a marshal came with a subpœna for Mr. John Dennison, who is auditor for the Union Line. Mr. Dennison had just gone away for two weeks to visit his two boys, whom he had not seen for a year, who had a ranch out near Medora. He will be back, probably, about the 1st of August or a little afterwards, and will be very glad to come here; or, if you would like, Mr. Hamilton, who could answer the questions as well as Mr. Dennison. I think Mr. Hamilton had charge of making up those reports——

Mr. DAY. You might give the stenographer Mr. Hamilton's name, if you remember it.

Mr. MCCREA. I do not; that is, I do not remember his initials; I think it is Hamilton; it might be Morrison. At all events, Mr. Dennison will be home about the 1st of August.

Mr. DAY. Very well. I think that is all now.

SUN BUILDING,
Washington, D. C., October 29, 1897.

JAMES MCCREA, ESQ.,
Vice-President Pennsylvania Railroad Company, Pittsburg, Pa.

DEAR SIR: Referring to your testimony taken at Washington July 20, 1897, in regard to the traffic turned over to the Pennsylvania lines at Chicago or Chicago junction points by the Baltimore and Ohio Railroad or its receivers or their agents during the period from January 1 to April 15, 1897, I beg to request that you furnish the commission, at the earliest practicable date, the statement promised, showing the total tonnage so turned over to the lines of the Pennsylvania system. You are also requested to furnish the commission with copies of the correspondence, telegraphic or otherwise, that passed between the Pennsylvania Company or any of the officers or agents of the Pennsylvania system and the receivers or agents of the Baltimore and Ohio Railroad relating to such traffic, and the percentages which the Pennsylvania lines were entitled to under the "arbitrators' award" of October 30, 1896.

Yours, truly, W. A. DAY.

PENNSYLVANIA LINES WEST OF PITTSBURG,
Pittsburg, Pa., November 13, 1897.

WILLIAM A. DAY, ESQ.,
Counsel for the Interstate Commerce Commission,
Washington, D. C.

MY DEAR SIR: Absence from the office and the necessity for a very thorough search through our records have prevented a more prompt response to the inquiries contained in your communication of October 29, asking for additional information in connection with my testimony

before the Interstate Commerce Commission on July 20, 1897. I now beg to say:

First. That the total tonnage turned over to the Pennsylvania lines (Pittsburg, Fort Wayne and Chicago Railway) at Chicago and Chicago common points by the Baltimore and Ohio Railroad Company during the period between January 1 and April 15, 1897, was between 1,900 and 2,100 tons. If you want the details of this tonnage, showing dates, car numbers, etc., I shall be glad to furnish them, but it will take some time to obtain the information, as it will have to be worked up from our waybills, etc.

Second. Having reference to your request for copies of the correspondence, telegraphic or otherwise, that passed between the Pennsylvania Company, or any of the officers or agents of the Pennsylvania system, and the receivers or agents of the Baltimore and Ohio Railroad Company relating to such traffic, at the time of my examination before the commission I stated that I did not remember whether the arrangement had been a verbal or written one, but that I thought it was by letter or telegraph. In this I must have been mistaken, as I have been unable to find any correspondence on the subject, and, upon thinking the matter over, it seems to me—although I will not be positive—that it was a verbal arrangement between Receiver Murray and myself. The conversation, as I recollect it, was that Mr. Murray stated that they were considerably "over" in the volume of their Chicago business, and asked, if they turned some of it over to the Pennsylvania lines, whether we would redeliver same to the Baltimore and Ohio Railroad at Pittsburg, to which I replied "certainly," and directed our then freight traffic manager to carry out the arrangement. I presume that Mr. Murray gave similar instruction to his traffic officers, and that the correspondence (copy of which is inclosed herewith) resulted therefrom.

Third. Under the arbitrator's award of October 30, 1896, the Pennsylvania lines were entitled to carry 19.4 per cent of the east-bound live stock and 21.2 per cent of east-bound dead freight from Chicago and Chicago common points.

Very truly, yours,

JAMES MCCREA,
Vice-President.

BALTIMORE AND OHIO RAILROAD,
Baltimore, November 24, 1897.

Mr. JAMES MCCREA,
First Vice-President Pennsylvania Company, Pittsburg, Pa.

DEAR SIR: I return correspondence inclosed with your communication of November 15. I do not now recall any conversation on the subject. I am not, however, at all positive that it did not occur. It is my inference, after reading Mr. Borner's letter of December 11 to Mr. Cole, that the matter was conducted through our respective freight officials.

Yours, very truly,

O. GRAY MURRAY.

Mr. Murray is probably right. My recollection is very vague as to the transaction.

J. MCCREA.

[Telegram.]

PENNSYLVANIA LINES WEST OF PITTSBURG,
Pittsburg, Pa., January 16, 1897.

C. L. COLE, *General Freight Agent Pennsylvania Lines:*

It will be satisfactory to the Pittsburg and Western to take the diverted business to go east via Baltimore and Ohio at Station C. To

insure prompt handling, however, please see that Pittsburg and Western are promptly supplied with proper transfer slips and all information necessary to move the cars from transfer.

T. W. GALLEHER,
General Freight Agent Baltimore and Ohio, Pittsburg, Pa.

[Telegram.]

PENNSYLVANIA LINES WEST OF PITTSBURG,
Pittsburg, Pa., January 16, 1897.

T. W. GALLAHER,
Baltimore and Ohio Railroad, Pittsburg:

Your company proposes to divert to our line at Chicago some business for seaboard cities that is to be redelivered to the Baltimore and Ohio at Pittsburg, through the Pittsburg and Western and junction railroads. I instructed Mr. Borner to say to Mr. Bigelow that we would accept the traffic, provided the Pittsburg and Western will take the cars through the connection in the Manchester yards, and you can readily see that we can not afford to pay switching to the West Penn. Railroad in order to make delivery to the Pittsburg and Western. I understand a few cars were carded from South Chicago last night, and request you will make immediate arrangements with the Pittsburg and Western to accept them at the point we propose.

C. L. COLE.

[Personal.]

PENNSYLVANIA COMPANY,
GENERAL WESTERN FREIGHT AGENT,
Chicago, Ill., January 15, 1897.

Mr. C. L. COLE,
General Freight Agent, Pittsburg, Pa.

DEAR SIR: Regarding diversions from the Baltimore and Ohio, as indicated in letter from General Western Freight Agent A. P. Bigelow, which you saw here yesterday, copy of which we now inclose as per request, we have to advise further that this morning our agent from South Chicago, with the undersigned, met Messrs. Bigelow and Weyman, the latter the local agent of the Baltimore and Ohio, and had somewhat of a definite understanding in regard to the transaction of the business. Two cars of freight were delivered to us at South Chicago last night and will go forward this evening, and in regard to which we will wire you so that you can arrange, as suggested, for prompt movement through Allegheny to the Baltimore and Ohio.

The arrangements are as follows: All fixed expenses which the Baltimore and Ohio are subject to in gathering up this diverted traffic, such as stock-yard trackage, elevator switching charges, etc., are to be prorated on per cents, as indicated in copy of letter inclosed. The fixed charges against us on diverted traffic are: First, switching charge of $2 for delivery via Junction Railroad, transfer between Allegheny and Glenwood; second, the actual cost of transferring grain from Western cars to Baltimore and Ohio cars, which will not exceed $1 per car, and third, the switching service of the Baltimore and Ohio, which has been agreed to by all concerned at $2 per car when freight originates at

South Chicago on the Baltimore and Ohio and $3 per car when such diverted freight originates on the tracks of the Baltimore and Ohio in this city or at the stock yards. The detail is to be carried out between the Baltimore and Ohio local agent and our own at South Chicago. So far as the switching arrangements at Chicago and South Chicago are concerned, it would seem as though we made as favorable an arrangement as possible, as our local agent was of the opinion first that a fair compensation would be about $3 per car on all traffic delivered us, and yet we succeeded in obtaining $2 on a portion of the traffic and $3 on the remainder.

Yours, truly,

WM. BORNER, *G. W. F. A.*

[Personal.]

PENNSYLVANIA COMPANY,
GENERAL WESTERN FREIGHT AGENT,
Chicago, Ill., January 14, 1897.

Mr. WM. BORNER,
G. W. F. A., Pennsylvania Company, Chicago.

DEAR SIR: With further reference to our conversation yesterday concerning diversions from this company to your line, we will begin at once to turn over to your company what freight we can consistently, making deliveries to you at South Chicago. The cars will be accompanied by transfer freight bills, which will give you full shipping instructions, contents of cars, weight, etc. It is to be understood that you will bill this freight to Allegheny and surrender it back to our company at that point. The divisions applicable upon the traffic, according to our figures, will be as follows:

	Miles.
Baltimore, Md.:	
Pennsylvania Company, South Chicago to Allegheny	456
Baltimore and Ohio, Allegheny to Baltimore	333
Total mileage	789
Percentage proportion, Pennsylvania Company	57.8
Percentage proportion, Baltimore and Ohio	42.2
Washington, D. C.:	
Pennsylvania Company, South Chicago to Allegheny	456
Baltimore and Ohio, Allegheny to Washington	307
Total mileage	763
Percentage proportion, Pennsylvania Company	59.8
Percentage proportion, Baltimore and Ohio	40.2
Philadelphia, Pa.:	
Pennsylvania Company, South Chicago to Allegheny	456
Baltimore and Ohio, Allegheny to Philadelphia	429
Total mileage	885
Percentage proportion, Pennsylvania Company	51.5
Percentage proportion, Baltimore and Ohio	48.5

In billing this freight you will deduct the following arbitraries before prorating: On dead freight for Baltimore, Philadelphia, and Washington, 1½ cents per 100 pounds. There is a junction railroad transfer charge between Allegheny and Glenwood of $2 per car. This, however, we will include in our statement to you of the terminals which must be borne by the property at Chicago. The Chicago terminals are of a varied character, which you fully understand, such as switching, trackage, transfer charges, etc. In order to simplify matters, we believe

that these particular charges can be better adjusted in a statement independent of the original billing, and we will periodically, or at the time of the discontinuance of the diversions, render to your company a statement covering the Chicago terminal charges which are to be pro-rated, also the junction railroad transfer charge at Allegheny.

I would further request that in billing the diverted freight from South Chicago you place prominently upon the waybills the term "Diverted freight from the Baltimore and Ohio road." We desire this notation made upon your billing in order that Chairman Tucker will be able to check same and give us due credit for all tonnage.

We trust that you will give all of the diverted freight very prompt movement.

Please acknowledge receipt by bearer, and state if the conditions contained herein meet with your approval.

Yours, truly,

A. P. BIGELOW, *G. W. F. A.*

PENNSYLVANIA COMPANY,
OFFICE OF THE GENERAL FREIGHT AGENT,
Pittsburg, Pa., December 12, 1897.

WILLIAM BORNER,
Chicago, Ill.:

Please say to Mr. Wight that we will take the grain at Chicago he proposes to turn over to us, and will surrender the cars to the Pittsburg and Western Railroad at Allegheny through the track connection in Manchester yard, but we can not undertake to make the delivery at Pine Creek, as the West Pennsylvania Railroad would demand switching charge. I presume the grain is corn, contracted at the old rate, and the switching at Chicago should be made as low as possible if we are expected to absorb it.

C. L. COLE.

PENNSYLVANIA COMPANY,
GENERAL WESTERN FREIGHT AGENT,
Chicago, Ill., December 11, 1896.

Mr. C. L. COLE,
General Freight Agent, Pittsburg, Pa.

DEAR SIR: Manager Freight Traffic Wight and General Western Freight Agent Bigelow, of the Baltimore and Ohio, have just been in this office and interviewed us in regard to their excess tonnage out of Chicago. They desired to know if, in the event that they diverted grain to our line at South Chicago, on account of our shortage, if we would resurrender the traffic to their system, the Pittsburg and Western, at Pittsburg.

The gentlemen named stated that while they did not know whether the courts would permit them to deliver traffic to us, they being in the hands of a receiver, still they would like to know if we would redeliver the property to them at Pittsburg, as indicated, and also to pay a reasonable switching charge for delivering the property to us at South Chicago. If we assent to these conditions they will take the matter in hand to see whether they could get permission to divert grain traffic to us.

Heretofore, as you are aware, traffic has been received by Eastern lines from those in excess by those in deficit with the understanding that it was to be surrendered to the originating line again at the western termini, and it has also been customary to pay a reasonable switching charge at the point where the grain is diverted.

We do not know how genuine this proposition is, but it might be well to test their sincerity and agree to the conditions named for which there has been precedent heretofore.

Kindly advise us by wire early to-morrow morning, as Mr. Wight desires to leave the city some time during the day.

Yours, truly,

WM. BORNER, *G. W. F. A.*

NEW YORK PRODUCE EXCHANGE v. BALTIMORE AND OHIO RAILROAD COMPANY ET AL.

The New York Produce Exchange *v.* The Baltimore and Ohio Railroad Company and others is a proceeding brought by the Produce Exchange of the city of New York for the purpose of abolishing certain differentials of 2 cents per hundred pounds in favor of Philadelphia, and 3 cents per hundred pounds in favor of Baltimore, Norfolk, and Newport News, against New York. The complaint alleges that the various defendants are members of a combination known as the Joint Traffic Association, and that this association, by the combined action of the various defendants, enforces the differentials complained of.

The answers of the various defendants show that all of them except three are members of the Joint Traffic Association. The only testimony introduced upon the trial as to that association consisted of the putting in of the articles of agreement under which the association was formed and the testimony of Mr. George R. Blanchard, who then was and still is its commissioner. A copy of this testimony and of the articles of association is herewith transmitted.

In his testimony Mr. Blanchard refers to certain circulars which were issued by him as commissioner, and a great many of these circulars were furnished the commission as a part of that testimony. Copies of several circulars signed by the commissioner of the association are herewith transmitted as sufficiently showing the nature of all.

From January 1, 1896, to November 4, 1897, less than two years, the board of managers of the Joint Traffic Association promulgated 1,221 circulars or rulings naming rates or containing regulations affecting rates, as appears by issues thereof printed and distributed from time to time. These circulars or rulings are not filed with the commission, but some have been secured by order issued in a pending case, and they are all contained in many unofficial files.

The authority exercised over rates is indicated in the following:

FREIGHT CIRCULAR NO. 222.

[Superseding freight circulars Nos. 32 and 146.]

[Corrected.]

[Board of managers: John Burton, George G. Cochran, John B. Garrett, D. S. Gray, H. J. Hayden, B. A. Hegeman, Milton Knight, Orland Smith, W. P. Walker, jr. H. J. Hayden, chairman.]

JOINT TRAFFIC ASSOCIATION,
143 Liberty street, New York, May 27, 1896.

RATES ON GRAIN EX-LAKE.

The managers recommend the following, effective Monday, June 1, 1896, and to remain in force until further notice:

(1) That the following rates apply at and east of Lake Erie ports on ex-lake wheat, corn, rye, or barley in lots of 8,000 bushels or over, and on ex-lake oats in lots of 10,000 bushels or over, shipped from one of

said ports at one time by one shipper to one consignee and destination, and for one station delivery at such destination:

[In cents per bushel.]

	Wheat.	Corn and rye.	Barley.	Oats.
To New York	5	4½	4½	3½
To Philadelphia	4	3¾	3¾	3
To Baltimore	4	3¾	3¾	3

(2) That the foregoing rates to New York, Philadelphia, and Baltimore also apply at and east of Lake Erie ports on similar quantities of ex-lake grain destined to interior points south of the southern boundary of New York State, shipped from said ports at one time to one consignee and destination.

(3) That on ex-lake grain for Albany rate points the New York at and east of Lake Erie port rates may be applied on quantities of 8,000 bushels or more of wheat, corn, rye, or barley, and 10,000 bushels or more of oats, shipped from one of the said ports at one time, by one shipper, to one consignee and destination, and from one station delivery at such destination.

(4) That the following rates apply at and east of Lake Erie ports on ex-lake grain destined to Philadelphia or Baltimore, or to interior points south of the southern boundary of New York State, based on New York, Philadelphia, or Baltimore rates, when shipped in lots of less than 8,000 bushels of wheat, corn, rye, and barley, or 10,000 bushels of oats:

[In cents per bushel.]

	Wheat.	Corn and rye.	Barley.	Oats.
To New York basing points	6¼	6	5½	4½
To Philadelphia basing points	5½	5	5	4
To Baltimore basing points	5¼	5	5	4

(5) That the rates at and east of Lake Erie ports to Camden, N. J., on ex-lake grain be: on wheat, corn, rye, and barley, one-half cent per bushel, and oats, one-quarter cent per bushel above the foregoing rates for similar quantities destined to Philadelphia.

(6) That the rates at and east of Buffalo and Erie on ex-lake flaxseed, in carloads, cars to be lined at the expense of shippers or owners, be on the basis of 1 cent per bushel above the at and east of Buffalo and Erie rates on wheat in carloads in similar quantities, carriers to assume no liability for leakage.

(7) That the rates on ex-lake grain from Buffalo to Boston, for export, be the same as the rates hereby established from Buffalo to New York.

(8) That on through lake and rail grain from western lake ports destined to New York, Philadelphia, or Baltimore, through rates may be quoted from such western ports, provided they are not less than the sum of the current lake rates plus the rates established from time to time at and east of Lake Erie ports.

(9) That these rates apply only to ex-lake grain, and the traffic shall be subject to the examination of the chief inspector, who shall report any cases in which it is claimed, or in which he finds, that the rates are improperly used.

G. R. BLANCHARD,
Commissioner.

FREIGHT CIRCULAR NO. 274.

[Abrogating freight circulars Nos. 87, 102, and 130.]

[Board of managers: John Burton, Geo. G. Cochran, John B. Garrett, D. S. Gray, H. J. Hayden, B. A. Hegeman, Milton Knight, Orland Smith, W. P. Walker, jr. H. J. Hayden, chairman.]

JOINT TRAFFIC ASSOCIATION,
143 Liberty Street, New York, June 24, 1896.

RATES ON NEW STEEL AND IRON RAILS.

The managers have approved the joint recommendations of representatives of the Central Freight and Trunk Line Association companies, made at Pittsburg May 7, 1896, touching the transportation of new rails, to the following effect, viz:

(1) That a special committee be appointed, to consist of one representative of each of the railroads leading from Chicago, Lorain, Bessemer, Johnstown, and eastern Pennsylvania and Maryland districts, as follows:

Districts.	Companies.
Chicago	Baltimore and Ohio. Grand Trunk system. Cleveland, Cincinnati, Chicago and St. Louis. Erie. Lake Shore and Michigan Southern. Michigan Central. New York, Chicago and St. Louis. Pittsburg, Cincinnati, Chicago and St. Louis. Pittsburg, Fort Wayne and Chicago. Wabash.
Lorain	New York, Chicago and St. Louis. Cleveland, Lorain and Wheeling.
Bessemer	Pennsylvania. Lake Shore and Michigan Southern. Erie.
Johnstown	Baltimore and Ohio. Pittsburg and Lake Erie. Pennsylvania.
Eastern Pennsylvania and Maryland	Baltimore and Ohio. Central of New Jersey. Delaware, Lackawanna and Western. Philadelphia and Reading. Lehigh Valley. Pennsylvania. Baltimore and Ohio. Delaware and Hudson.

(2) That all questions of rates on new steel and iron rails from said districts be referred directly to said committee, but the rates proposed by that committee upon Joint Traffic Association traffic are to be subject to the approval of the managers.

(3) That the rates on new rails from Scranton, Pa., Danville, Pa., Bethlehem, Pa., Chester, Pa., Steelton, Pa., and Sparrows Point, Md., to western points in effect January 1, 1896 (and duly filed with this association), namely $3.60 per ton of 2,240 pounds from the said points to Chicago, and on that basis from those points to other western points, be authorized.

(4) That the rates agreed upon between the Johnstown, Bessemer, and Lorain committees, substantially on the same basis as those from the eastern points named above, be also authorized.

The rates from Bessemer and Lorain are those agreed upon at a joint meeting of those committees June 4 and 5, 1895, and are as shown in its proceedings.

(5) That the rates from Johnstown to points west of Pittsburg be 10 per cent above the west-bound rates from Bessemer, with a maximum of 30 cents and a minimum of 15 cents per ton of 2,240 pounds above the rates from Bessemer; but that no rate from Johnstown to any point west of Pittsburg be lower than $1 per ton of 2,240 pounds.

(6) The rates from Pittsburg, Cochran, and Munhall will be the same as from Bessemer in both directions.

(7) That effective on legal notice, east-bound rates on new rails from Chicago be authorized as follows:

[Per ton of 2,240 pounds.]

To Albany, N. Y., and points taking same rates	$4.00
To New York, N. Y., and points taking same rates	4.00
To Philadelphia, Pa., and points taking same rates	3.60
To Baltimore, Md., and points taking same rates	3.40
To Boston, Mass., and points taking same rates	4.70

G. R. BLANCHARD, *Commissioner.*

FREIGHT CIRCULAR No. 593.

[Board of managers: John Burton, Geo. G. Cochran, John B. Garrett, D. S. Gray, H. J. Hayden, B. A. Hegeman, Milton Knight, Geo. Olds, Orland Smith, W. P. Walker, jr. H. J. Hayden, chairman.]

JOINT TRAFFIC ASSOCIATION,
143 Liberty street, New York, January 15, 1897.

RATES ON EXPORT CORN.

The managers recommend that, effective January 20, 1897, and continuing until modified or withdrawn by their action, rates on export corn only, in car loads, minimum weight as per official classification, be made on the basis of 15 cents per 100 pounds, Chicago to New York, with usual differences to other seaboard cities.

G. R. BLANCHARD, *Commissioner.*

The rules of the traffic association were suspended, and competition in certain territory was permitted by the following freight circular, No. 46, issued March 11, 1896:

"The managers have adopted the following:

"*Resolved*, That the rules of the Joint Traffic Association be, and are hereby, suspended until otherwise ordered on all freight traffic to and from all points in the State of Virginia on and south of a direct line drawn from Clifton Forge, Va., northeastwardly to Orange, Va., and thence southeastwardly along the line of the Chesapeake and Ohio to and including Norfolk and Portsmouth, Va., so that lines in the Joint Traffic Association may, if necessary, meet the competition of outside carriers, with the distinct understanding, however, that this suspension of rules shall not in any way detrimentally affect traffic to and from other territory subject to the joint traffic agreement, and that export or import business coming within the jurisdiction of the Joint Traffic Association shall continue to be handled under its rules; and provided further, that the option herein granted shall only be exercised by mutual understanding or agreement between the representatives of the freight departments of the Chesapeake and Ohio, Pennsylvania, and the Baltimore and Ohio railroads, and that all tariffs issued under this grant in competition with lines outside of this association shall be filed with the managers for their information.

"G. R. BLANCHARD, *Commissioner.*"

On October 30, 1897, by freight circular No. 1218, the managers promulgated the rules to govern the computation of west-bound commodity rates authorized on and after November 8, 1897. These rules read as follows:

"(1) When a rate per ton is authorized on any commodity from New York to Chicago, either locally or as a basis for other Western points, and it is provided that corresponding rates shall apply from other Eastern cities, the rate per ton shall in all cases be used as the basis for computing the rates upon such commodity, and not the equivalent rate per 100 pounds.

"(2) When a rate per 100 pounds or per ton is authorized upon any commodity from an interior trunk-line point (other than points taking Philadelphia or Baltimore rates) to Chicago, and it is provided that corresponding rates shall apply to other Western points, such rate shall be arrived at by scaling the rate per 100 pounds or per ton on the established percentages of the rate from such interior point to Chicago applicable to such Western points.

"ILLUSTRATIONS.

"(*a*) Assuming a commodity rate has been authorized from Albany, N. Y., to Western points on basis of 16 cents per 100 pounds—Albany to Chicago—the rate to East St. Louis would be computed on the basis of 116 per cent of 16 cents, which would make the rate to East St. Louis 19 cents per 100 pounds.

"(*b*) Assuming a commodity rate has been authorized from Albany, N. Y., to Western points on basis of $3.20 per ton—Albany to Chicago—the rate to East St. Louis would be computed on the basis of 116 per cent of $3.20, which would make the rate to East St. Louis $3.71 per ton.

"(3) When a rate per 100 pounds or per ton is authorized upon any commodity from New York to Chicago as a basing rate, and it is provided that corresponding rates shall apply from interior points, the rate from Albany, N. Y., to Chicago and other points, taking 100 per cent of New York-Chicago rates, shall be 80 per cent of the New York-Chicago rate, and the rate from Syracuse or Rochester, N. Y., to Chicago and other points, taking 100 per cent of New York-Chicago rates, shall be 70 per cent of the New York-Chicago rate. Rates to points taking other than 100 per cent of New York-Chicago rates shall be scaled on the established percentage basis of the rate from Albany to Chicago, or Syracuse-Rochester to Chicago, as the case may be.

"(4) When a rate per 100 pounds or per ton is authorized on any commodity from an interior trunk-line point, taking Philadelphia or Baltimore rates to Chicago, and it is provided that corresponding rates shall apply to other Western points, such rates shall be computed on the basis of the equivalent New York rates per 100 pounds or per ton.

"ILLUSTRATIONS.

"(*a*) Assuming a commodity rate has been authorized from Lancaster, Pa., to western points on basis of 22 cents per 100 pounds, Lancaster to Chicago. To obtain the East St. Louis rate, add 2 cents to the 22 cents (Lancaster being a Philadelphia-rate point), thus making an equivalent rate New York to Chicago of 24 cents. The East St. Louis rate should then be made 116 per cent of 24 cents, or 28 cents, from which deduct the Philadelphia differential of 2 cents, making the rate Lancaster to East St. Louis 26 cents per 100 pounds.

"(*b*) Assuming a commodity rate has been authorized from Lancaster, Pa., to western points on basis of $4.40 per ton, Lancaster to Chicago. To obtain the East St. Louis rate, add 40 cents to the $4.40 rates (Lancaster being a Philadelphia-rate point), thus making an equivalent rate New York to Chicago of $4.80. The East St. Louis rate should then be made 116 per cent of $4.80, or $5.57, from which deduct the Philadelphia differential of 40 cents, making the rate Lancaster to East St. Louis $5.17 per ton.

"G. R. BLANCHARD, *Commissioner.*"

Another circular dated February 4, 1898, permits carriers in the association to meet a competitive rate over routes through Canada. The circular reads as follows:

FREIGHT CIRCULAR No. 1369.

[Board of managers: John Burton, Geo. G. Cochran, D. S. Gray, H. J. Hayden, B. A. Hegeman, Milton Knight, Geo. Olds, Geo. F. Randolph, Orland Smith, W. P. Walker, jr. H. J. Hayden, chairman.]

JOINT TRAFFIC ASSOCIATION,
143 Liberty Street, New York, February 4, 1898.

RATE ON LEATHER FROM WISCONSIN POINTS TO BOSTON, MASS., ETC.

The managers have dopted the following:

"Whereas the Soo Line issued a tariff, effective June 8, 1896, publishing rate of 50 cents per 100 pounds on leather in carloads, from Prentice, Wis., to Boston, Mass., and such rate was subsequently made effective on the same article by the Chicago, Milwaukee and St. Paul Railway from Wausau and Merrill, Wis., via Soo Line and its eastern connections; and

"Whereas, pursuant to action of the directors of the Grand Trunk Railway Company of Canada, the same rate has been made effective on like traffic from Wausau, Merrill, Phillips, Chelsea, and Medford, Wis., to Boston and Boston-rate points via Chicago and the Grand Trunk Railway system (main line), as well as via across Lake Michigan routes connecting with the Grand Trunk Railway system (main line); and

"Whereas the same rate has been made effective on like traffic from Wausau and Merrill, Wis., to Boston via car-ferry route across Lake Michigan, in connection with the Canadian Pacific Railway via Detroit; and

"Whereas lines leading from Milwaukee and Chicago, competitive with the Grand Trunk Railway system, have requested authority to participate in like through rate on leather, in carloads, from such Wisconsin points to same eastern points,

"*Resolved*, That, effective February 10, 1898, it shall be permissible for the railway companies parties to the Joint Traffic Association to participate, via all routes via Chicago and Chicago junctions, also via west bank Lake Michigan points and via Mackinaw, in a through rate of 50 cents per 100 pounds on leather, in car loads, minimum weight 20,000 pounds, from Wausau, Merrill, Phillips, Chelsea, and Medford, Wis., to Boston and other Boston-rate points to which the same rate is in effect via the Grand Trunk Railway system (main line) and its eastern connections."

G. R. BLANCHARD, *Commissioner.*

GEORGE R. BLANCHARD, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. KERNAN. Where do you reside?

Mr. BLANCHARD. In New York.

Mr. KERNAN. You are connected with the Joint Traffic Association?

Mr. BLANCHARD. I am, as its commissioner.

Mr. KERNAN. And you have occupied that position for how long?

Mr. BLANCHARD. Since the association was first organized, a year ago the 1st of last January.

Mr. KERNAN. And prior to that time what experience generally had you had in railroad matters, and especially with reference to rate matters?

Mr. BLANCHARD. I had for eight years been the commissioner of the Central Traffic Association at Chicago. Prior to that time I had occupied positions with the Erie Company as general freight agent and vice-president, and formerly as general freight agent of the Baltimore and Ohio, and prior to that time with the Central Ohio and Ohio and Mississippi Railway companies.

Mr. KERNAN. And this service that you have mentioned covered about how many years in the aggregate?

Mr. BLANCHARD. It covers about thirty years.

Mr. KERNAN. Now, when the Joint Traffic Association first began business—went into operation—it found in existence in the rate sheets these differentials which we have talked about.

Mr. BLANCHARD. Yes, sir.

Mr. KERNAN. And it did nothing at that time except to accept the rate sheets as they were with these differentials in them?

Mr. BLANCHARD. That is all.

Mr. KERNAN. And it has not since that time sought in any way to change the differentials, but simply to enforce them as it found them?

Mr. BLANCHARD. They have not sought to change them. They have had them under advisement and for consideration, but have never made any changes or done anything positive about it.

Mr. KERNAN. Now, you may just briefly give us an idea of how the Joint Traffic Association carries on its operation under the agreement which is on file with the commission; what its agencies are for carrying out what that agreement provides shall be done under the agreement.

Mr. BLANCHARD. The organization of the Joint Traffic Association, as the contract shows, required that the railway companies which had in effect tariffs under date of the 1st of January or prior thereto should, in accordance with the resolutions of the board of directors of the various companies comprising the association, file the existing class rates and commodity rates, in both directions, with the associations, to establish a starting point for the maintenance of rates. Those rates were filed from time to time. Those are the rates that, from time to time, were considered as to whether any changes were to be made in them or the rules applicable to them. Briefly, that is the procedure.

Mr. KERNAN. The object of the association, mainly, is to enforce the rates they have in operation; and, as modified from time to time, in so far as they may do so, lawfully?

Mr. BLANCHARD. The powers of the managers, as stated by the contract, are recommendatory to the various companies. The boards of directors reserve all their rights and powers. A circular recommending certain action is issued by me, as provided in the contract. When there is any occasion to make changes in the rates, they are sent out in the

form of a circular, which I am authorized to send to the various companies.

Mr. KERNAN. And the object is to procure the maintenance of the rates?

Mr. BLANCHARD. The purposes of the association were to maintain the rates that have been filed; to make common rules; to secure uniformity in the methods of conducting the business; and, as the contract recites, not idly but sincerely, to cooperate with the terms of the interstate-commerce act and those who administer it.

Mr. KERNAN. To do what they could, within the law, to maintain rates?

Mr. BLANCHARD. Yes, sir.

Mr. KERNAN. And from time to time to meet the changed conditions, by recommending such changes as they might think fit?

Mr. BLANCHARD. Quite so; under the same rule of uniformity.

Mr. KERNAN. Now, with reference to the differentials; you say the have taken no action as to changing the differentials?

Mr. BLANCHARD. None at all.

Mr. KERNAN. Now, prior to January 1, 1896, is it true that the full extent and observance of the differentials, as a rule, had been that they were printed in the rates scheduled, and in a desultory way sometimes observed and sometimes not?

Mr. BLANCHARD. It was my belief, judged from my experience, that the schedules published were not maintained in all instances; I would like to add in all instances.

Mr. KERNAN. So that, as a general proposition, it may be stated, may it not, that prior to January 1, 1896, the differentials had not been sufficiently enforced for long enough periods to enable us to test their effect upon the movement of traffic from interior points to the different Atlantic ports?

Mr. BLANCHARD. I should say that that was a correct inference from the situation. I believe the irregularities in the rates largely destroyed the value of the actual comparison of the 3 and 2 cents below New York.

Mr. KERNAN. And that arose from the irregularities which, in one way or another, permitted the differentials to be violated?

Mr. BLANCHARD. It arose from so many causes that it would be difficult to generalize.

Mr. KERNAN. Well, irregularities in one way—I will not say irregularities, but from the fact that in one way or another, either through remission of elevator charges or through some means, the differentials have not been maintained.

Mr. BLANCHARD. I think that is a correct statement. The differentials were not maintained, and the irregularities were the products of concessions in the export conditions—elevator charges, lighterage, manipulation of the proportions of the roads west of those composing the Central Traffic Association. For example, if the Burlington road saw fit to carry through St. Louis instead of Chicago, they might make some concessions. I do not mean those irregularities were always, or even in a majority of instances, attributable to our own lines.

Mr. KERNAN. Now, after the 1st of January, 1896, the association, in such ways as it deemed it might lawfully do, did undertake to eliminate these irregularities and bring about a maintenance of the rates?

Mr. BLANCHARD. In the very exhaustive comparison, made in my office, of some 86,000 tariffs filed under the resolutions of the boards of directors that I have just referred to, various rules and conditions in

the different tariffs were sought to be reconciled; not only the rates themselves, but the differences by the different routes, were sought to be unified; but the rules, regulations, and conditions, the classifications, the car loads, the quantities, constituting the minimum car loads, and a great many things of that kind which had been irregular in the different associations—different in Canada from what they were in the United States, in some instances—all were sought through this association to be made uniform. At the same time we took up every question which constituted an element of uniform charge—the mileage on private cars, out of which it was possible that the owner of those cars might receive certain allowances from the railroads; elevator charges, lighterage charges, delivery charges at Chicago, switching charges, and a multiplicity of those things engaged the attention of the board, with a view to taking all those elements which enter into the making of a rate and which made the rate alike by all routes.

In connection with the elevator charges, for example, at the seaboard where the charges were 2½ cents for 100 pounds, the maintenance of the 2½ cents, which was more than the differential of Philadelphia, was just as important as the differential itself and half a cent more so. The board took into consideration all those things, and entered into correspondence with all the roads from Montreal to Norfolk with a view to enforcing uniformity of terminal charges in accordance with the resolutions of the various boards authorized, and in some instances by the exchanges, and in other instances by private corporations, and in other cases elevators built by the railroads and leased to other persons; and that multiplicity of conditions, complicated by steamship contracts, certain privileges granted by one elevator different from those of another—all those conditions the board has sought strenuously and carefully to equalize before they could determine the actual effect of these various differentials upon the sum total of the various charges at each port and the effect upon the export traffic.

Mr. KERNAN. And the object of this action on the part of the board was the maintenance of the schedule rates as they were filed with you by the different roads, including these differentials, and in order finally to reach a position where a fair test could be made under fair conditions, at all points of origin and at the ports, of the effect of the differentials?

Mr. BLANCHARD. I can repeat that statement as my own; that is substantially the purpose of the association.

Mr. KERNAN. Now, during 1896, is it true that, as the result of the recommendations of the board in the directions that you have suggested, there came about a more uniform enforcement or maintenance of the rates, as per schedules that had existed prior to that time?

Mr. BLANCHARD. It is my belief that the Joint Traffic Association has, by its machinery and the good faith of the officers constituting the roads which compose it, more nearly secured the maintenance of uniform rates than has been secured by any other means at any time, unless it may be the first eight to fifteen months after the passage of the interstate-commerce law.

Mr. KERNAN. And may we not assume, therefore, as the result of that, that the year 1896 is on the whole the fairest test of the differentials that we have since 1882—so far, I mean, as their maintenance through the action you have suggested is concerned?

Mr. BLANCHARD. I think the average maintenance of the rates on the traffic, which I understand to be the subject of your inquiries, has been more nearly accomplished during 1896 than in any other year since—I would not say since 1882—but after the first year following the passage of the interstate commerce act.

Mr. KERNAN. So that, with the exception of the year you have mentioned, we may fairly look at the statistical returns of the movement of traffic in 1896 for the purpose of determining the effect of the differentials better than to any year prior to 1896 that you can mention?

Mr. BLANCHARD. So far as the railroads constituting our association are concerned, yes, sir. It will be understood that the Norfolk and Western and other lines south of us are not members of our association, and I did not intend to say that they averaged better in 1896 than in other years.

Mr. KERNAN. The papers yesterday stated that the Norfolk and Western has come down now.

Mr. BLANCHARD. The Norfolk and Western has agreed to cooperate in certain west-bound traffic. The matter you have in hand has not been touched.

Mr. KERNAN. Now, has the action of the association in its recommendatory capacity, as you have suggested, tended in any degree to equalize the elevator charges at New York, as made by the railroad elevators, the floating elevators, and the Brooklyn Warehouse Company?

Mr. BLANCHARD. As to the Brooklyn Warehouse Company I have no knowledge.

Mr. KERNAN. As to the floating elevators?

Mr. BLANCHARD. As to the floating elevators and stationary elevators at the seaboard termini of all the lines members of our association, the uniform rate was made and a uniform schedule agreed to be adopted.

Mr. KERNAN. That was a new condition, substantially, in 1896, to wit, that the railroad elevators—that is, the floating elevator combination in the harbor here—were induced to unite with your efforts in maintaining a uniform cent and a quarter charge for elevation?

Mr. BLANCHARD. I so understood.

Mr. KERNAN. And that, of course, has resulted in eliminating such diminution of charge as prior to that time the floating elevator combination might have been in the habit of making?

Mr. BLANCHARD. I do not know anything about the concessions prior to that, but after that time they agreed.

Mr. KERNAN. But if prior to that time they had been in the habit of charging less in whole or in specific instances, that was eliminated by this action you mention?

Mr. BLANCHARD. So I understand.

Mr. KERNAN. And the object of that was so that there should be maintained at each port for the elevation of grain, whether through railroad elevators or through floating elevators, a uniform charge of 1¼ cents a bushel?

Mr. BLANCHARD. I think it was a uniform charge of 1¼ cents on grains. It was different on oats.

Mr. KERNAN. And that would also tend, as far as it was accomplished, to maintain these differentials in their integrity?

Mr. BLANCHARD. When I refer to better maintenance of rates in themselves, I refer to all the elements that enter into and compose it.

Mr. KERNAN. How long have you been familiar with the differentials at Buffalo and Erie and Fairport on grain to New York, Philadelphia, and Baltimore?

Mr. BLANCHARD. Well, during late—eight years I was away. I had no familiarity with them. That traffic did not come under my supervision at all. Since the organization of the Joint Traffic Association it only passes under a general review. All that matter continues under

the organization which we call the Trunk Line Association. They make the recommendation to our association and our association acts upon it.

Mr. KERNAN. Then those lake differentials have been the subject of agreement between the trunk lines interested at the ports of Erie and Fairport and Buffalo?

Mr. BLANCHARD. By the lake differentials I understand you to mean the differentials east of Buffalo.

Mr. KERNAN. To the three ports.

Mr. BLANCHARD. Those have been the subject of agreement between the interested lines.

Mr. KERNAN. We find those differentials, Mr. Blanchard, to be a cent and a half a hundred on grain in favor of Philadelphia as against New York, and a cent and a half on grain in favor of Baltimore?

Mr. BLANCHARD. Yes, sir.

Mr. KERNAN. We find that as between Philadelphia and Baltimore, that instead of maintaining the Chicago differentials, giving Baltimore a cent the advantage of Philadelphia, that the ex-lake rate seems to be based upon the idea that there should be no difference between Philadelphia and Baltimore. Can you tell me why that is?

Mr. BLANCHARD. I can not state all the reasons which actuated the Trunk Line Association in those recommendations. The general principle of those recommendations is that, taking this place, Erie, as a sample, with all the lines by rail that come into it, that when the traffic comes to Philadelphia by the way of Erie there should be a differential to Philadelphia and Baltimore by the rail lines, so that the same grain originating at the same points of origin would have the same rates as if the property came to them direct. That was the basis upon which they were generally made. When the Baltimore and Ohio Company meets these lines in conference they have assented not to maintain the full force of that. They have yielded to us to the extent that the rate might be put up to Baltimore to make it the same as Philadelphia.

Mr. KERNAN. Is it not true that that differential can not be based upon distance, inasmuch as there is no difference in distance practically?

Mr. BLANCHARD. I do not understand.

Mr. KERNAN. Is it not true that the differential is not based on distance? Is there any authority on the distance principle for the basing of the differentials?

Mr. BLANCHARD. No; the distance principle is but one of the numerous factors in this whole question of differentials. It is not based upon distance.

Mr. KERNAN. Can it be based upon difference in cost?

Mr. BLANCHARD. In my judgment, no. I do not think the expert lives who can tell the cost of transportation of any particular traffic like this. I think I would like to explain that briefly.

The Pennsylvania Railroad, for illustration, has 80 per cent or more of all its traffic in mineral, stone, lumber, and very heavy articles, which are loaded by the forwarder and unloaded by the consignee. Now, in making the average of the cost on the Pennsylvania, that enormous traffic is put in to reduce the general average, and therefore when you take the general average and apply that to west-bound dry goods or east-bound grain, I do not think anybody can tell you that it is a fair average applicable to that particular business. On the New York Central that is reversed. Only 15 per cent of their traffic is in minerals, and their cost is increased. So it is practically impossible to tell by the average of any railroad or by the average of them all what the cost of the transportation of any particular department of their service is.

Mr. KERNAN. Can you tell me any fairer way to test these differentials as to cost than to take the average cost per ton per mile of the Pennsylvania, say of 4 mills per ton per mile in 1896, inasmuch as it has lines to the three ports of Baltimore, Philadelphia, and New York? That may not be a correct way; but can you tell me any better way by which we can test the differentials by the cost question that is obtainable?

Mr. BLANCHARD. If the cost is to be the basis of fixing these rates, I should say, in view of the attempt to make the differentials bear reasonable and due relation to each other to all those cities, that instead of taking Pennsylvania alone all the lines leading to the seaboard should be taken.

Mr. KERNAN. And that cost averaged?

Mr. BLANCHARD. And that cost averaged. Even then the conditions I have stated would make the average misleading.

Mr. KERNAN. Have you attempted in the Traffic Association to do that?

Mr. BLANCHARD. We have never attempted to do that; we have kept no statistics of that kind.

Mr. KERNAN. You repudiate both the distance and cost question as being practical ones to test this question?

Mr. BLANCHARD. I think they are only approximations.

Mr. KERNAN. Is it not true that the object of the differentials is to obtain an equitable distribution of the traffic to the six Atlantic ports, so as to give to each port that traffic which under normal conditions it would obtain? So as to, in other words, recognize the advantages at each port and to allow each port to get the share which its natural advantages entitle it to?

Mr. BLANCHARD. If I may be permitted another little lecture. The fact about this matter is this: When I was general freight agent of the Baltimore and Ohio Railroad the differentials were never distinctly agreed to, but on a line extending from Baltimore to Indianapolis, or Peoria and Burlington, on the Mississippi River, the rate was 10 cents a hundred less to Baltimore than to New York. Below that line it was 5 cents. Mr. Vanderbilt, with the New York Central lines, took this question up with a view to equalizing that. The petitions to-day are substantially duplicates of those made in 1881 or 1879. The matter was taken up and the differentials were reduced voluntarily by the Baltimore and Ohio lines. I assisted in that, and reduced the 10 cent differential to 5.

Mr. KERNAN. That is what they ought to do now.

Mr. BLANCHARD. Their people are here now, and if you can persuade them to do that the Joint Traffic Association will be relieved of a good deal of trouble. The thought I have about this matter is this: That the differentials ought to take into consideration the larger expenses in New York in every department of its service. But when it comes to the question which is the burning one now, becoming more important every day, the question of the opening of other ports, in the fifteen years, which is a long commercial life or for great questions, since Cooley, Thurman, and Washburn made their award, the conditions ought to be taken up on the grounds they were then. Taking Chicago on the west and Liverpool on the east, it is the desire of the traffic managers of the lines and that of the managers of the Joint Traffic Association to establish such conditions that the rates from these various points to the port of export plus the charges attaching to that traffic at the port of export and plus the ship's rate shall constitute the

common delivery substantially from Chicago to Liverpool. That ought to be the purpose of us all, and I believe it is. In that view of the case I have had no reason to doubt that inasmuch as these changes have been brought about without legislative assistance, with the advice and counsel of the various boards of trade and through conferences and concessions and agreements among the railroads, that when our association had data enough to prove that the various rates were maintained, that then it should be taken up in the same spirit. For my own part, as a commissioner, I welcome this discussion. I think it wise that all parties should hear what has taken place here and that it would be wise to meet in conference and adjust the matter in the same way as before.

Mr. KERNAN. I would like, right in line with that idea, to ask you whether, first, have you looked through the statement and tables and one thing and another which we have prepared?

Mr. BLANCHARD. I have not had time since you sent me a copy.

Mr. KERNAN. Could you suggest any line of investigation or of statistics, in addition to those we have prepared, which would throw light upon the question and enable us to reach a fair determination?

Mr. BLANCHARD. I would like to answer a little at length on that subject, if you please, Mr. Kernan. I was one of the original members of the executive committee of the Trunk Line Association, and at that time the statistics kept by Mr. Fink were very elaborate. It has been commented on here that the rate to Boston for the longer distance is made the same as to New York. Now, to be accurate, and for that criticism to have weight, the sources of that traffic ought to be known. For example, wheat which may be grown in Michigan may go to Boston upon a much less distance than to Baltimore, and unless you know the sources of the business and know its destination and then ultimately reduce it to the ton-miles traveled over each railroad everything is conjecture. Since the Joint Traffic Association was organized we have dropped a great many of those statistics—in part they had been dropped before, and we have never renewed them. Some of the lines in the West voluntarily have kept statistics on that subject. For instance, new lines and elements have come in at St. Louis since the time of Mr. Fink's statement, to which you attach so much importance. There are three lines open to the lake that were not then in the association. They do not report their traffic. We have no means of knowing the extent of their tonnage, where their property originates, etc. We have no means of taking into account all the traffic that originates at Illinois points, for the reason that a large quantity of grain from Kansas and Nebraska, with the charges prepaid to the Mississippi, appears as Illinois traffic while it is not Illinois traffic.

Without going into the refinements of all these questions, these are the difficulties in giving to you the average length of haul, sources of business, and ultimate destination. Another difficulty that appears in the statements of the statistician of the United States at Washington, on asking him if he could tell how much grain came to New York by canal for consumption here, he stated he could not give it. We can not, in all cases, segregate our business so as to tell its points of origin and destination. We have got to generalize in the manner I have spoken of by taking Buffalo as a starting point and making the rates on something as a unit, such as I have just stated. It will afford me great pleasure to go through your tables, and it will be sincere desire of our board and myself to assist this investigation and to make suggestions.

Mr. KERNAN. That is what I wanted to ask you to do. Mr. Fink made a report on this adjustment of transportation to the seaboard in 1882. There are certain tables in that report based upon the traffic of 1880, and especially, at the close of the report, he gives us a table showing the origin of the traffic in the West just as you suggested; in other words, he says, just as you do, in order to determine the question with justice to all, one of the elements to be known is the origin of the Western traffic.

Mr. BLANCHARD. Yes, sir.

Mr. KERNAN. If we wanted to find out whether Duluth traffic—wanted to find out the tonnage of the Duluth traffic—and then want to find whether New York is getting that traffic or whether it is being diverted, for instance, to a point like Baltimore, we might find out in that way fairly whether Baltimore has invaded our parish and taken from us traffic which we ought to have. Now, would it be possible to substitute for the table of that nature, which you have there, one showing the conditions in 1896 in the same way?

Mr. BLANCHARD. There are a great many conditions different from those that prevailed then, as, for example, the traffic that comes to Buffalo now is largely bought in Buffalo—changes hands there. Originally it came through. I do not know that we have any means, with the very large business that arrives at Buffalo by lake, of telling just where it originates, because we do not control that business. Those boats are not in our organization, so it would be more difficult than it was at that time, when so large a part of the business was through business. I have already anticipated this statement by referring to the conditions at Peoria. At St. Louis the lines to the South would divert the business south of the Ohio River. I would be very glad to take this statement and examine it.

Mr. KERNAN. The extent, it seems to me, to which it would need to go would be to take the traffic delivered at the six Atlantic ports and then ascertain the origin of that traffic—the real origin.

Mr. BLANCHARD. Has the produce exchange the sources of the traffic coming from Buffalo by lake, where the charges are paid up to Buffalo, and where we treat it as though it grew in the streets of Buffalo? We do not know where it came from.

Mr. KERNAN. I was speaking of the differentials from Chicago. If we could get the origin of that traffic, that is what we want. The ex-lake traffic is not material. The origin of the ex-lake traffic is Buffalo, Erie, and Fairport. The question we want to get at is whether or not under the operation of the differentials that traffic to which we are entitled under normal conditions—that is, a certain share—is not being diverted by the differentials to the Southern ports. Can you give the amount of all that traffic—of the percentage going to each of the ports?

Mr. BLANCHARD. From each general source of origin?

Mr. KERNAN. From Buffalo, Erie, and Fairport as points of origin.

Mr. BLANCHARD. I think that is all stated.

Mr. BLACKMAR. I think Buffalo, Erie, and Fairport can be treated as one point of origin.

Mr. BLANCHARD. Yes, sir. The same reason holds good when grain comes into Chicago. We do not know whether it came from Winnipeg or San Antonio.

Mr. KERNAN. Will your statistics show the distribution of the traffic?

Mr. BLANCHARD. At Chicago, but not the sources of origin.

Mr. KERNAN. Will the statistics show it at Buffalo?

Mr. BLANCHARD. At Buffalo they do.

Mr. KERNAN. Can you show the distribution of the traffic at Chicago and Buffalo, Erie and Fairport? Can you give us that?

Mr. BLANCHARD. I can supply that.

Mr. KERNAN. Now, taking flour at Minneapolis, the distribution of that could be given, could it not?

Mr. BLANCHARD. That would have to be supplied, I think, by the road west of Chicago, for the reason that some of the traffic passes both over the Canadian Pacific and the "Sioux" roads, and does not come to us at all. It would go by the Grand Trunk and the Canadian Pacific. You can readily obtain that there.

Mr. KERNAN. Is not the same thing true regarding Chicago as a point of origin? Would it not be practicable to show the distribution of traffic as to Chicago, as to the points of origin to those six ports?

Mr. BLANCHARD. Yes, sir. That would be very difficult.

Mr. KERNAN. If you would give us that we would be very glad to have it. How would it be as to Duluth as the point of origin?

Mr. BLANCHARD. Duluth would have nothing to do with it except as it may be shown in the Buffalo, Erie and Fairport statement. That all comes in bulk and would not show Duluth separately.

Mr. KERNAN. We have taken the position on this statement that the canal as an element to be considered on this question has been very much eliminated since 1882. That is due to the fact that the percentage it carries has become so small that these differential rates or railroad rates must be considered now substantially with reference to railroad conditions, and are not to any great extent influenced by the canal conditions. Now, what do you say as to that?

Mr. BLANCHARD. Well, I should dissent from that view. The business of the canal last year, as I recollect it, was approximately, in grain and flour, 17 per cent of the total receipts of New York.

Mr. KERNAN. Six per cent of the total of all these ports?

Mr. BLANCHARD. Six per cent of the total of all these ports, but 17 per cent of the arrivals at New York. A less proportion than that would determine the rail rates.

Q. Now, when you assume that the canal is a competitor, not only of grain and corn, and to a limited extent of such gross articles as lumber, and to some extent coal, does it not follow that, at least as to all rates except those as to flour and grain, the canal has ceased to be a factor to be considered in determining this differential question?—A. With the exception of these coarse freights to which you have alluded, with the exception of some iron ore and some other things—stone, coal, and iron—the canal is not the factor that it was in 1882.

Q. In other words, at high rates it has been demonstrated, has it not, that the rail carriers to New York and Philadelphia and Baltimore can, as against the canal, take substantially all the traffic, both east-bound and west-bound, except those articles which you have mentioned?—A. Well, that depends upon the relative difference in rates.

Q. I say at rates slightly higher than canal rates. Of course there is a limit beyond which you can not raise the rates without invoking canal competition.—A. Yes, sir.

Mr. KERNAN. That is all, I think.

Cross-examination by Mr. LOOMIS:

Q. Mr. Blanchard, I am told that the existing rate on wheat and oats from Chicago to New York is 20 cents per hundred. Is that right?—A. Yes, sir.

Q. And at the existing rate on the same commodities Chicago to

Newport News is 17 cents per hundred. Is that right?—A. Yes, sir; and to Baltimore.

Q. I am told that the rate from Chicago to Newport News is made by the publishing and filing with the Interstate Commerce Commission, and at other places as required by law, of a tariff by the company called the Big Four and the acceptance of that tariff by the Chesapeake and Ohio Railroad Company, reaching to Newport News. Is that right?—A. Yes, sir; the Cleveland, Columbus, Cincinnati and Chicago road, which is called the Big Four.

Q. And the Chesapeake and Ohio?—A. Yes, sir.

Q. The first-named company issues a tariff showing this?—A. Yes, sir.

Q. And the second company accepts it?—A. Yes, sir.

Q. Now, that rate continues until these two companies change it. Is not that so?—A. Their understanding is that they will issue the same differentials to Newport News that have been heretofore granted under this arrangement to Baltimore.

Q. These two companies could diminish that rate if they saw fit, could they not?—A. Both the Chesapeake and Ohio and the Big Four roads are members of our organization and can not diminish it against the recommendation of the managers except on notice of the board of directors of these companies.

Q. Well, if the boards of directors of the two companies saw fit to diminish that rate they could do it, couldn't they?—A. Yes, sir.

Q. And there is nothing in the Joint Traffic Association to prevent their doing it?—A. Nothing at all.

Q. And I suppose it might be assumed that if the rate was diminished to say 15 cents per hundred, and there was an inducement in it to the two companies named, they might be expected to do it. Is not that so?—A. Yes, sir.

Q. And those two companies could increase this rate from 17 cents to 20 cents, the New York rate, could not they?—A. Yes, sir.

Q. So far as the physical act is concerned there is no legal obstacle to prevent them; all they would have to do would be to make the new tariff and publish it and file it where by law it is required to be filed, accepting the 20 cent rate. Is not that so?—A. That is true.

Q. There is nothing in the Joint Traffic Association agreement or the administration of it to prevent their doing that?—A. Not a line.

Q. The same thing is true as to all these other petitioners?—A. Equally true, naturally, at all ports by all routes.

Q. The line from Chicago to Boston is composed in part of the Boston and Albany and the New York Central, and then the New York Central's western connections?—A. Yes, sir.

Q. These companies have not any control of the routes from Chicago to Newport News or to Philadelphia or to Baltimore, have they?—A. None whatever.

Q. Now, the board of managers that considered this subject, that board consists of ten members?—A. Yes, sir.

Q. Representatives of the different companies, members of the association?—A. Representatives of the ten systems, as they are called.

Q. Ten systems embracing several companies in each system?—A. Yes, sir.

Q. And they have considered this very subject, I understood you to say?—A. On two different occasions they have had the subject up and given it preliminary examination. They have had one or possibly two discussions with steamship companies and the Produce Exchange.

Q. And this board of managers has power to make recommendations?—A. Only recommendations.

Q. On the subject?—A. Yes, sir.

Q. Now, when you said that it was one of the principal objects of this association to maintain rates, did you mean by that to prevent secret reductions, cutting by rebates, etc.—is that what you meant?—A. After a tariff has been published by the companies and filed according to law, with due notice as required by law, it is the purpose of our association to prevent any undue or irregular methods which will deplete that tariff.

Q. You did not, then, mean that its object was to maintain any particular rate for any particular period, whether high or low?—A. Not at all; we make no rates. We endeavor to maintain those that are made by the railroad companies, in the exercise of their power.

Q. According to the published tariff, open to everybody?—A. The contract so states.

Q. And not to make rates which would result in an undue advantage and preference to one locality or to one individual; is that it?—A. That is the purpose of the association.

Mr. LOOMIS. That is all, sir.

Mr. FISHER. If your honors please, I would like, inasmuch as Mr. Blanchard has been requested by the petitioner's counsel to furnish some further statements—and of course these must be furnished—on the part of my colleague to reserve the right of asking any questions until after that time, especially, if your honors please, as, after the petitioner has completed his examination, we propose to ask the commission for an adjournment. Your honors will see, of course, the propriety and the necessity really for an adjournment. Probably the suggestion has occurred to the minds of the commissioners without any suggestion on my part.

Commissioner KNAPP. Will you say what there is, what the further information is, which Mr. Blanchard is expected to furnish, and, in connection with that, the time within which he can conveniently do it?

Mr. KERNAN. I understand Mr. Blanchard to say he could give us the distribution of traffic through these six ports originating at Buffalo and Erie and Fairport, and also as to Chicago traffic, but that he could not go further than that. Is not that so? Could not go to Duluth—you could not do that?

Mr. BLANCHARD. No, sir. What six ports have you reference to?

Mr. KERNAN. New York, Boston, Philadelphia, Baltimore, Newport News, and Norfolk.

A. I can not give you Norfolk; that is the reason I asked you.

Mr. KERNAN. All right; the five ports, then.

A. Yes, sir.

Mr. FISHER. What year did you ask for?

Mr. KERNAN. Why, the year 1896; yes, sir.

Mr. SHERMAN HOAR. I would like to have you include some ports north of Boston in that.

Mr. BLANCHARD. I think we can give Montreal and Portland.

Mr. BLACKMAR. Can you give St. Johns?

A. I can not state whether St. Johns is stated separately or not, or in the agreement with Montreal.

Mr. BLACKMAR. But if you can.

A. Yes, sir; I will do it; I understand it is the desire of the commission and I will do so.

Mr. FISHER. You can just as well furnish that information for 1894 and 1895 as 1896?

A. No, sir; the trunk lines did not keep any through data in those years as they did in 1896. I can give you such statements as were prepared for 1894 and 1895.

Mr. FISHER. They would be only partial?

A. I can state them as far as they go. I would like to be accurate in my statements. I can not say now how far I can go in them, but in 1896 we can give it all right.

Mr. KERNAN. Ought not it to show separately for domestic consumption and export?

A. We have no means of stating that. You will find it in the Chicago statement for the entire year, which I understand the commission desire furnished, and I would like to say that we will be very happy to furnish any of these things at any time, but also desire to say that there is no certainty as to these data. There is a note appearing on each one of these statements showing the exports by weeks, but there is this difficulty that I would like to refer to in that connection, and that is where traffic is consigned for export, in some instances, a higher rate may be paid, as, for example, the grain to-day which would appear in the Chicago-rate report as export traffic, when it comes here it may be used in domestic consumption, and it may be delivered at the higher rate; the reverse of that is equally true. So that the statement that will appear will only indicate the traffic as it left Chicago, and intended to be exported or for domestic consumption at that time. The same is true, I think, of Boston. That is, that traffic consigned there locally may be exported. I think Mr. Mills, sir, who appeared before you yesterday, can testify to the correctness of that.

Mr. BOND. You can cover, in these statements, other articles besides grain, can you not?

A. The statements that are referred to from Chicago cover everything—show the traffic not only in grain, but the same conditions of the traffic in cotton and iron ore, etc.

Commissioner KNAPP. Now, we understand that it is the desire of the gentlemen to postpone the further examination of Mr. Blanchard until after these statements are furnished. Is that the fact?

Mr. FISHER. Yes, sir.

Commissioner KNAPP. Within what time will it be convenient for you to furnish them?

A. I will let you know by 2 o'clock. I think I can get the most of them for you by to-morrow morning.

Mr. KERNAN. How would it be, Mr. Blanchard, if we should ask you to furnish the same thing from St. Louis and Cincinnati? Would not we then have this complete?

A. We could give you as much as we have from St. Louis and Cincinnati. I would say that the Chicago and Alton and other roads—south of the Ohio River—have not always reported throughout the year.

Mr. FISHER. Then it would be, as far as Cincinnati and St. Louis are concerned, entirely incomplete?

A. I would not state that. Some of these data have differed at different periods. One company might stop its reports in June, and the other in September, and we would not be able to tell you anything about them, except for the period when all reported alike.

Q. Then it would be only a partial statement?—A. Yes, sir; when I furnish that, it would be a partial statement.

Q. Then it would be misleading?—A. Yes, sir; it would be misleading; it would be complete for various months, when all were reporting. If it is desired we could furnish that.

Mr. KERNAN. We have, your honors, a witness or two more in the same line that we have been calling them, regarding grain, flour, etc., and I am not altogether certain but what, after we conclude these, that that will pretty much exhaust our testimony and take up the balance of to-day. I think it might perhaps be as well to take the adjournment then, if we are going to take one.

Commissioner KNAPP. I was about to inquire whether you gentlemen would be prepared to continue your examination of Mr. Blanchard immediately after he furnished that information. It occurred to me that perhaps you would want some opportunity to examine those figures.

Mr. FISHER. We would undoubtedly, if your honors please.

Mr. KERNAN. I have no objection to that. I think after we call two or three witnesses more, that will exhaust the day and perhaps it will accommodate everybody and be convenient to your honors to take the adjournment then instead of proceeding to call other witnesses.

Mr. LOOMIS. What adjournment are you speaking of, the recess or what?

Mr. FISHER. You propose at the end of the day, although you have not completed the examination of your witnesses, to ask for an adjournment of your side of the case?

Mr. KERNAN. I will then have completed all the examination except your witnesses.

Mr. FISHER. You do not propose to announce, then, that you have finished your case?

Mr. KERNAN. We may determine to put the traffic managers on the stand and examine them, but it is hardly worth while to take up that part of the examination at this time of the week, because we could not finish the examination, but we will substantially have completed all of the class of evidence that we have been going over; we have been looking over our own witnesses, and we think we have nearly finished. And then there will only remain such further investigation as may be made by the examination of such witnesses as Mr. Blanchard and others, who are familiar with this railroad question.

Commissioner KNAPP. Do we infer from that that you propose an adjournment at the close of the hearing to-day?

Mr. KERNAN. I think if one is to be taken this week it had better be taken then.

Commissioner KNAPP. It will be out of the question to finish the hearing of this case this week.

Mr. KERNAN. I do not think it can be done.

Commissioner KNAPP. There must, then, be an adjournment to some future time?

Mr. KERNAN. Yes, sir.

Mr. FISHER. In respect to the adjournment, if your honors please, your honors can see, of course, from the nature of these statistics, that they have been furnished by the other side, and the times that they have been furnished to us here, that we have had no time for the purpose of making any inspection. It has really been impossible to do it; and Mr. Kernan, I think, stated yesterday or the day before that, although we had had some months to prepare for the trial of this petition and for the preparation of these statistics, he had found that time too short even for himself.

Mr. KERNAN. I said a couple of weeks' notice of the hearing in which to do it, which was too short.

Mr. FISHER. Well, it is quite apparent, from the testimony that has been produced, that the committee of the Produce Exchange has had this matter in contemplation for a long period of time and the prepara-

tion of these statistics has gone on right along. Now, there ought to be some reasonable corresponding time to enable the respondents on their part to investigate the facts which are set out in the statistics and to produce such statistics as they want; and it seems to me, if your honors please, that an adjournment of six weeks or two months would be a reasonable adjournment, in view of the magnitude of the inspection which it is necessary to make.

Mr. KERNAN. Well, I do not think the investigation ought to be postponed as far as that, hardly. It ought to be a matter of two or three weeks, or something of that sort.

Mr. BOND. You remember we live at outports, Mr. Kernan.

Mr. PETTIT. Your honors must recollect that the information contained in these statistics is so voluminous that we have got to get people to look this up pretty thoroughly.

Mr. KERNAN. We will get you any information.

Mr. BLACKMAR. They have such admirable lawyers on the other side that they don't need anything to help them in the way of this information. My friend Pettit here is a first-class statistician. I know that from my own experience.

Mr. BLANCHARD. Mr. Kernan, do you want anything more with me?

Mr. KERNAN. I think that is all to-day; I am much obliged to you.

Commissioner KNAPP. Possibly we may assume that you gentlemen will confer and agree upon an adjourned date or a time for taking up this case for a further hearing; and in order to facilitate you I will say that the commission is now under engagement to take up some cases through the South, beginning on the 5th of April at Savannah, which will require probably the most of the month of April, so that unless further testimony can be taken in this case next week and the early part of the following week the commission will not be able to assign you a date until after the 1st of May.

Mr. KERNAN. We can be ready to close the case and would be very glad to do it next week; and at the same time I recognize that there is reason in the suggestion which has been made by the other side, so that I have no objection to a reasonable adjournment, say to the first part of May, and in that case with the full understanding that when we meet then we will close it.

Mr. FISHER. Well, we will agree to that.

Mr. KERNAN. I should say that we ought to have an understanding to that effect, and then we should all be here prepared to close it, because we would not want to have the hearing left over to have it during the summer term.

Commissioner KNAPP. With reference to the date of further hearing, I can only say ahead that we will not be able to assign a date during the month of April. It is probable we can take up the case for a further hearing almost any day after the 1st of May, during that month, but we appear now to be obliged to be in Chicago in June, so that about all the time we have at our disposal to visit New York in this case is this coming week, the first part of next week, and the month of May. Of course we can accommodate ourselves for a day or two, one way or the other.

Mr. KERNAN. If agreeable to the commission, why not say the 3d of May, which is Monday, and then the commission would expect to devote as much time during the week as would be necessary to close the evidence.

Commissioner KNAPP. It occurs to us to say that it might be safer to name the 10th of May than the 3d.

Mr. KERNAN. I think we can agree to that

Commissioner KNAPP. The second Monday instead of the first.

Mr. KERNAN. Yes, sir; then we will understand it to be the 10th of May.

Mr. FISHER. The 10th of May.

Mr. PETTIT. Where will your honors sit at that time? Probably as this covers a considerable extent and section of country, and where parties interested would be liable to come from all localities, it seems to some of us that probably Philadelphia would be a more central point than New York to hear the witnesses that we will want to call on behalf of these commercial interests; they will have to come from as far as Newport News south, and as far as Boston. Your honors will have the United States court rooms there, and you will find them very comfortable and convenient, and it would be nearer the center of the case.

Mr. KERNAN. The seat of the difficulty.

Mr. PETTIT. Yes, sir; nearer the seat of difficulty.

Commissioner KNAPP. I understand, then, that there is to be an adjournment after to-day, but that you will call two or three other witnesses this afternoon?

Mr. KERNAN. Yes, sir; we will fill up the day.

Commissioner KNAPP. You will fill up the day. And now, then, during the recess for luncheon, perhaps you gentlemen can agree as to where the next sessions are to be. If not, we will have to fix a place.

Mr. KERNAN. Perhaps so, and in regard to that I want to say to you that I think this hearing has demonstrated that no more convenient place for everybody can be found than here. All the testimony has shown that all of the large export business that we are talking about is controlled here in New York, and that it is represented by the houses here. There is nothing else to talk about, substantially.

Commissioner KNAPP. I am only suggesting to you that you take that into consideration with the view of attempting to agree among yourselves. If you can not agree among yourselves, of course we will agree among ourselves. We will let that matter stand until after the recess. I want to ask Mr. Blanchard a question or two. You will kindly remain in session now until some questions can be asked Mr. Blanchard.

Commissioner CLEMENTS. I understood you to say that the rates were maintained equally as well for a year or fifteen months after the interstate-commerce law was passed as during 1896. Am I correct?

A. Yes; that is my impression.

Q. The same differentials existed then as do now, did they not?—A. Yes.

Q. You further stated, I believe, that it was your belief and your observation, from facts that have come into your possession, that tariff rates—established tariff rates—had been better maintained in 1896 than any other year except the period you referred to?—A. Yes, sir; since 1887.

Q. Now, does that statement have reference to tariff rates outside of the Joint Traffic Association?—A. I have no knowledge of any other rates.

Q. You only apply that statement to your own roads?—A. Yes, sir; to our own territory.

Q. Are there some roads that carry to Newport News and Baltimore and Norfolk and Boston that are not members of your association?—A. Taking the South, only a little business which goes to Norfolk by way of the Chesapeake and Ohio road was included; the Norfolk and Western was not included, and they carry considerable traffic from St. Louis that was not included in that statement. My statement was only as to the

roads in our association; the road which leads to Newport News is in the association, all the lines to Baltimore, all the lines from the West to Philadelphia, New York, and Boston, except the routes of the Canadian Pacific. They are all included in my statement except these. The Canadian Pacific appointed a manager on the board in June last, but their traffic only includes that business which passes from points in the United States at the present time south of Sudbury, which is the junction of their Pacific Coast line. Traffic passing through Sudbury from the Pacific Coast is not included in it. Traffic originating at points in the United States and passing through Sudbury has been included, but not in the statement; it is included in the rates which they publish.

Q. From your observation and knowledge of the facts, do you have the same belief as to the maintenance of rates to the Southern ports by way of the South?—A. By way of the South?

Q. As to this port?—A. My observation is that they have not maintained the same rates through the Southern ports.

Q. You mean they have not maintained the published rates?—A. I mean they have not maintained the published rates—that is my belief; that is, not published tariffs of which I have knowledge. I speak of grain rates more particularly of Galveston and New Orleans and the opening of certain new lines such as the Asheville route, and so on.

Q. That leads to Newport News?—A. No, sir; that does not lead to Newport News, but to New York by steamer connections.

Q. From what point?—A. They leave from Savannah.

Q. It is your belief, then, from these facts which you observe, that while the differential exists as stated the roads carrying directly to New York are maintaining the rates, and the others, leading to the Southern ports, are not?—A. My observation is clearly to that effect.

Q. To what effect?—A. That the rates of the Joint Traffic Association were, during 1896, substantially maintained. My information as to the Southern rates is derived so much from hearsay that I would not like to say anything more than that I have information to the effect that freight rates have not been so regular and that these companies have not maintained our rates, although they may have maintained the rates which they have made themselves, about which I do not know.

Q. Then it would not follow that the change in the business was due to the published differentials, or agreed differentials, from that statement?—A. No, sir.

Mr. FISHER. You are speaking of the Gulf port roads, are you—the roads leading to the Gulf ports?

A. Yes, sir; and by way of the coast below Norfolk.

Mr. FISHER. You are speaking of the Southern roads?

A. Yes, sir.

Mr. BLACKMAR. You do not include the roads to Baltimore and Newport News?

A. No, sir; I am speaking of points south of Newport News and Norfolk.

Mr. SHERMAN HOAR. When you said that all the roads to Boston were members of the Joint Traffic Association, that statement should be qualified by omitting the Boston and Albany Railroad, should it not?

A. I meant that the New England lines are not members of the association, but that their connecting lines running to the Hudson River are members of the association, and we have received their cooperation in the purposes I have recited.

Commissioner CLEMENTS. In speaking of the shipment of grain from

the West, you mentioned Chicago as a basing point coming through to the Atlantic ports. Is it not true, since the improving of the harbors at Galveston and Newport News and Norfolk, that much of the grain in the territory of Kansas and Nebraska that formerly came this way now take the nearer and more direct way to these Gulf ports?

A. There is a larger proportion of grain going to the Gulf ports now than before these lines had their facilities. Then it went through Chicago or St. Louis or Peoria, but since the improvement of their facilities at Galveston, the improvements of the Galveston harbor, the erection of the elevators and the construction of facilities at New Orleans, that has been the means of taking considerable additional traffic to these two points. They are the natural outlets for that section of the territory, and are entitled to their division of the business, as much so as Baltimore is entitled to its share as compared with New York.

Q. At the same rates, traffic will ordinarily move by the shortest routes?—A. Well, that depends; the shortest route may be to the Gulf, and then the sea route may be longer. It may be the shortest route to the Gulf, and then it goes by sea, and it may be the longest route from the same point in the West to Liverpool. It follows that the traffic must always follow the shortest entire route, and, indeed, much of the traffic that has gone by way of Galveston, while it may be the shortest route there, when it comes to the foreign destination it is the longest mileage to that ultimate destination.

Q. The ultimate destination?—A. Yes, sir.

Q. Where the rail-line part of it is shorter?—A. Yes, sir; where the rail-line part of it is shorter. To illustrate that question, it happens to be the same distance to a mile, I believe, from Chicago to New Orleans by the Illinois Central as it is from Chicago to New York by the Pennsylvania. Now, while these distances are increased to St. Louis, so that the basis of our rates to St. Louis is 116 per cent of the Chicago rate, the Illinois Central reverses that proposition. It is 796 against 918 miles, and the result is that they are able to make less rates from East St. Louis to New Orleans, while our proportionate rates have always been higher from East St. Louis than from Chicago. I recite that as one of the complications entering into this proposition. Now, when we get west of the Mississippi River (and our association does not extend beyond it), and in the grain-producing regions of Kansas and Nebraska, there are increased rates to all ports from Norfolk to Montreal as compared with New Orleans and Galveston, so that there has been no attempt on the part of our lines to do more than adjust their rates to new commercial conditions, in a general way recognizing, as I believe all the members do, that those parts are entitled to their reasonable share of the original business.

Commissioner CLEMENTS. Since the better development of these ports by elevators and shipping facilities, deeper water in the manner you speak of, does not a great deal of grain come from northern Texas and Nebraska and Kansas there that formerly went to Chicago?

A. Yes, sir; undoubtedly.

Q. Did not it formerly go from northern Texas to the Atlantic ports?—A. There were some very small quantities of grain. Northern Texas used to supply the South through the Memphis and Vicksburg gateways. They did not send so much north. Some of it was milled at East St. Louis, but what was necessary to be sent to this very large consuming district in the interior, in the interior of New York, the State of Pennsylvania, and so on, why, naturally, that came through the Chicago gateways.

Q. How are the shipping facilities from the Gulf ports with respect to the frequency of vessels going and obtaining tonnage for shipments from these ports as compared with New York?—A. I can not say as to that at all. I have never seen the comparative lists of sailings. They are easily accessible, but they are much less frequent than they are from New York.

Q. Now, have not ocean rates diminished over former years—considerably diminished from both Galveston and New Orleans and diminished from Newport News and Norfolk?—A. Yes, sir; all these seaport cities.

Q. And New York also?—A. Yes, sir.

Q. And Boston?—A. Yes, sir.

Q. And about in the same proportion?—A. Well, I can not answer for the Southern ports at all—nothing south of Norfolk or Newport News—but the impression arrived at from current reports furnished by agents of ships is to the effect generally that the reduction of rates has been greater on ocean freights from points south of New York than it has been from New York and points north of it.

Q. Are there more lines than there were formerly between these ports?—A. There has been an increase of lines to the South as compared with those of New York—a larger percentage—and the sailings have been increased from these Southern ports more than from New York or Boston.

Q. Can you tell whether or not the terminal charges—the term called here "port charges"—incident to this harbor in shipping from New York have been increased or diminished since the period you allude to—1886 and 1887?—A. I have no knowledge on that subject at all.

Q. You have not?—A. No, sir; it does not come under me; or does not come into my possession.

Q. You said, if I understood you correctly, to illustrate, that the Big Four Railroad and the Chesapeake and Ohio could at any time, notwithstanding their membership in the Joint Traffic Association, reduce their rate. You meant to say by that, I suppose, that under the law they can do it if they choose to do it?—A. They can do it both under the law and under the contract with the traffic association.

Q. Do I understand you to say that they can be members of that association and parties to that agreement and obey all of its rules, and at the same time independently act for themselves without consulting the other members of the association, and reduce their tariff?—A. I want to draw a distinction between the rates of the association and its rules. By the terms of the contract the board of managers make recommendations to the various companies comprising the association and put a clause in the contract, to which I refer you, in which it is distinctly provided that if any company dissents from the recommendations of the managers, they can, by action of their board of directors, duly notify the board of managers of their dissent from those rates and publish other rates. Now, that dissent naturally relates to lower rates, because they would not make any dissent to higher rates; therefore they have a right, as far as that goes, but when it comes to the rules applicable to rates and classifications, certain rules govern traffic from origin points, in Chicago, to points of delivery, at seaport points, to certain intermediate points, etc., and in that condition such rules would remain in force, but the rate-making power of the board of directors of the company is entirely reserved in every respect by the contract.

Q. Now, suppose these two systems should want to reduce their rates to Norfolk to 15 cents, and being members of your association and

desiring to live up to their agreement in every way, what step would they first take?—A. They would simply give us the notice provided in the clause of the contract to which I have referred. Then the contract provides that the managers shall consider the steps necessary for the adequate protection of the other members.

Q. What steps are provided for by the other roads?—A. There are no steps provided for by the other roads, except if the rate was reduced to Norfork or Newport News to-day by the Chesapeake and Ohio road to 15 cents, there is no reasonable doubt that the rate would be immediately reduced to Boston, New York, Philadelphia, and Montreal to correspond with it.

Q. Is there not some application to your board that precedes any notice that they would give?—A. They would come to us; there is a provision in the contract, and also in the practice of the association, that if they dissented from the rate they would be invited before us to state their case, and be gladly welcomed, and then, if they still adhere to that then their recourse is as provided.

Commissioner PROUTY. If we take any action on this, of course we want to get at some basis on which that action should be based. Now, what do you say is the purpose of these differentials?

A. The purpose of the differentials originally, and as perpetuated in somewhat modified forms, is to make the rates from the Western producing centers forwarding to European points of consumption substantially alike, not on through bills of lading especially, but in the aggregate of the charges.

Q. Having Chicago as one point representative of the Western points and Liverpool as another point representative of the foreign ports, the object of the differential is to make the rate from Chicago to Liverpool through all the ports the same?—A. Substantially.

Q. And if you accomplish that purpose it is not any part your purpose to see whether the proper amount of traffic goes one way or the other? All you aim to do is to keep the actual rate, the actual cost of that transportation, the same?—A. That is just the case exactly, the proposal being that if the through freight rates are the same the European buyer and the American seller, and all intermediate commission agents, etc., would be left entirely free and untrammeled to choose their own route, and uninfluenced by the action of the different railroads.

Q. You would not, then, in determining a differential, consider the claims of New York, Boston, Baltimore, Philadelphia, or Norfolk? That has not anything to do with it so long as the rate through each port is the same?—A. Substantially, that is correct.

Q. When was this present differential fixed?—A. The present differential was fixed by a decision of Judge Cooley and Senators Washburn and Thurman in 1882.

Mr. PETTIT. Did not they simply ratify?

A. No; the contest which had been going on between Mr. Vanderbilt and the New York lines on the one side and the Southern lines on the other resulted in such irregular rates that there were no accurate differentials at all, and as a result of that decision a meeting was held at the Brevoort House at which each agent agreed to make certain modifications, but the time when the railroads finally decided it and which the presidents affirmed was in 1882.

Commissioner PROUTY. The testimony before us is that on cargo lots the ocean rates from the five ports are substantially the same. Is that your understanding of the matter?

A. We are now collating and endeavoring to get the information

together, myself and my colleagues, to ascertain what these rates are. The information that has come to the office is that they vary greatly in that respect. Of course, the ocean rates are fixed more squarely in reference to grain, but with reference to other cargoes, such as provisions and cotton, etc., they are not. All these questions have to be taken into account as they come up, but as to the cargo question to which you refer, I stated a little while ago that our information is particularly to the effect that the reduction in the Southern ports has been greater in the Virginia ports during the period since the passage of the law. Of course, that is only from hearsay; I have no other means of knowing.

Q. The testimony before us tends to show that the cargo rates on grain from the five ports is identically the same; and if that were so, and the grain was all carried abroad in cargo lots, there ought to be no differentials at either place.—A. If all the other conditions and circumstances were alike—harbor charges, I would say, terminal charges, and all that sort of thing—that would be the theory upon which rates are constructed.

Q. Now, in point of fact, grain is sometimes carried abroad at berth rates and sometimes at cargo rates. I have here a table which shows that in 1882 there was a certain difference between the berth rates for New York and Philadelphia and Baltimore. That table shows that in 1896 that difference is substantially eliminated; it is about the same now. Now, if in point of fact there has been a shrinkage in this difference, there ought to be a corresponding shrinkage in the differentials if everything else continues the same?—A. There ought to be a classification; I can not say what that should be, but that ought to be the theory in the application of these rates, in the formation of these rates.

Commissioner CLEMENTS. You have said, in answer to a question of Mr. Loomis, I believe, that the purpose of the maintenance of rates as expressed in the joint traffic agreements, and which is the object of your association, has reference to the maintenance of rates established and published under the law?

A. Yes, that is the amount of it; yes, sir.

Q. That is the purpose of it?—A. That is the purpose of it.

Q. Do we understand you by that to mean to say that one purpose of it is not to maintain the rates agreed upon by the association, with its machinery for making rates—competitive rates to points on all the lines—and that the maintenance of the rate meant is the maintenance of the rate that the association makes or authorizes or agrees to?—A. The purpose of the association perhaps I can state a little more clearly than I have yet. At a point like Chicago, where there are ten eastbound railroads, some conference as to the maintenance of rates is essential to commercial equity and fairness at that point. There is no difference between having ten rates on ten railroads and ten rates on one railroad, so far as the advantage or the ruin of the commercial houses is concerned; therefore the essential parity of rates must be determined by conference and agreement. For that purpose we will suppose the application made to-day—and I would like to say that we have now applied between four and five thousand commodity rates between the East and West where the roads reduced the class rate. That application, whatever its nature may be, whether to eliminate a commodity rate which we thought too low or lower one which the shipper thought too high, is brought before our board. There being two independent associations east and west of Buffalo and Pittsburg and Toledo and Wheeling, the rates are referred by me to the commissioners

of these respective associations to be laid before all those lines, and all those lines cast their written ballots as to what they favor. The aggregation of these ballots is brought to our office, tabulated, and laid before the board of managers as the conclusion of the railroad companies in that respect.

In some cases those recommendations are adopted and in a great many not, and when it is sent out it is sent out in the form of a recommendation, a circular of which I shall be very glad to furnish the commission, simply saying, in every case, the managers recommend so and so. Now, by the terms of this contract, after that rate is made in that way, with the necessity for a published uniform standard, then the machinery of our association is used, so far as it can be done, to maintain that rate, provided the railroad companies accept the conclusions of the managers, and if it is reasonable and proper it is published and filed according to law. A copy of the tariff in our association territory is filed with me at the same time it is with your honorable board, as I understand, and the object of our association is to act as the right arm of your organization and make the same efforts to maintain those rates. Now, as to making those rates, I think I have correctly described the basis. As to the great mass of all these rates, of which there are now in our territory more than 600,000, operating between 4,000 Western points and 7,000 Eastern destinations, with all the complications resulting from all that work we have simply adopted this basis.

When the law went into effect the east-bound freight rate from Chicago to New York on first class was 75 cents; the west-bound freight rate was $1. The railroad companies met and, pursuant to the conditions of the law and their understanding of it, reduced the west-bound freight in every case, although it was on a different class of goods, more valuable, to the same basis as the east bound. That is now the basis of the rate. In other words, the units or pivotal points are New York in the East and Chicago in the West, they having been reduced to those standards and having intermediate or fluctuating rates for traffic of exceptional character—dressed beef, grain, cotton, wool, live stock, meats, and so on. These rates are from time to time changed, but the class rates are supposed to remain substantially where they were at the time of the passage of the act. They have never been challenged by the public, or if they have been, only in isolated cases. As to the application of the rule between certain points, they have been granted hearings before the Trunk Line Association and the Central Traffic Association, and we welcome these hearings and are always glad to have them. The rates, then, as between Cincinnati and Indianapolis are a percentage of Chicago, and have reference to distance. Where the distance is more it is increased, as to St. Louis, where it is 116 per cent, and at Peoria 110. The Boston rate for export is the same, with certain differentials on classes for local consumption higher. Philadelphia is made 2 cents less on grain and Baltimore 3. Then those differentials are carried down through the interior of Illinois and other States—Peoria, Vincennes, Cairo, Cincinnati, Indianapolis, etc., that being substantially the basis of rate making.

Now, from that basis the Joint Traffic Association has rarely departed, because it has been the result of the evolution of rates, as I may say, and the result of the reductions of rates on cotton, within my limited experience, has been from $5 per 100 pounds to 57 cents from East St. Louis; on flour, from $2.55 per barrel to 58 cents from St. Louis to Boston, and west bound on dry goods from $2.50 from New York to Chicago to 75 cents; the rate on cheese from Buffalo has been reduced

from $1.50 per 100 pounds to New York to where it is to-day, say, 20 cents. Now, in the reduction of these rates, there being some point at which it must stop, a reasonable uniformity of procedure is essential. The railroads did meet and make these rates in the way that I have specified. They are always glad to entertain any questions as to the reasonableness of these rates, but admitting them to be reasonable we have regarded it as fair to the public, under the common law and the law organizing this body, under our own organization, to do everything in our power to maintain them and prevent unfair, unreasonable, and secret preferences in the maintenance of those rates.

Commissioner CLEMENTS. Then I infer from all you have said that you do not wish to be understood as limiting the term, or expression "maintenance of rates," as the purpose of your association, but simply to enforce the maintenance of rates that have been published under the interstate-commerce law.

A. If I left any other impression with you I am very glad of the opportunity to correct it.

Commissioner CLEMENTS. It includes the making of what your association believes to be right, so far as the rates are concerned, and an adherence to them after being made?

A. That is true; and there is one feature in the making of our rates as to which I would like, if you will permit me, to make a statement. We have, for example, a committee consisting of twenty-three officers of the lines representing all the steel rail interests in the country which is engaged in making through reduced rates on steel rails commensurate with the reductions that have been made in the price of steel rails. All articles of steel and iron manufacture our classification calls for fourth class, small quantities, and fifth class in carloads. Last week we reduced that entire classification all over the territory to expire at the end of navigation—one class in all directions; that was the result of this conference. But now having agreed upon rates as the result of this conference and the commercial conditions of this country, our association will bend all of its efforts to the maintenance of this reduced standard of rates.

Commissioner CLEMENTS. What I wanted to know is whether we are to understand that you, in purpose as expressed, of maintaining rates—whether that includes the holding up of rates to a standard which you want to enforce, as well as the adherence to them after they are made and published?

A. That includes the revision of rates from time to time after their determination, and then their maintenance.

Q. Don't you exercise any influence through this association to prevent any individual line reducing the rate below the points where the other lines would be willing to compete?—A. Yes, sir; we would ask for a conference and go over the matter.

Commissioner CLEMENTS. And the whole machinery is with a view of that as well as for the purpose of maintaining the rates after they are published?

A. Yes, sir. Now, our reduction on corn from 20 cents to 15 cents was the result of a conference of that character.

Commissioner PROUTY. Do you think these remarkable reductions would have taken place if there had been a joint traffic association all the way through?

A. I do not think the association has any effect except to maintain rates which commercial conditions require after they are established.

Commissioner PROUTY. You think this is for the benefit of the merchants, then?

A. I think so; I never heard of any complaint.

Mr. BOND. I would be glad if you would state the rate conditions in Nebraska and Kansas and the Southwestern corn belt during the last season as regards the rates to Gulf ports and Atlantic ports?

A. Can you be a little more explicit?

Q. I mean, what were the comparative rates for that district—just the rate?—A. Generally speaking, I have not this from any knowledge which would enable me to bring it under my oath to give correct testimony, but I understand that practically the pivotal point of that matter is that the Illinois Central has made a rate from East St. Louis to New Orleans; and assuming that it is at this time 11 cents, which I believe to be the fact, that rate is made on about parallel points west of there south of Galveston. That is the general plan, as I understand, but it is misleading with regard to the Gulf ports—but that is only hearsay—so that the farther west you get the rate remains the same to the Gulf ports, but increases the rate by way of St. Louis, Peoria, and Chicago to the Eastern ports. It is an extremely difficult geographical question to meet and consider.

Commissioner CLEMENTS. What I wanted to get at was the comparison between the operation of the Gulf rates in that territory and the Joint Traffic Association rates.

A. Their rates are very much lower. Does that answer your question?

Commissioner CLEMENTS. I wanted to know what they were, the actual rates.

A. Assuming that the rates from Neosha, Kans., to Galveston to-day is, say, 12 cents a hundred, and the rate from the same point to East St. Louis is 7 cents a hundred, our rate east of East St. Louis would be 20 cents to Baltimore and 23 cents to New York on wheat; it would be 23 and 7, or 30, against their rate of 11, 12, or 15, as the case may be, from some of these group points. From a number of these points their rates to Galveston are, substantially, in some cases, one-half from the grain-producing regions of Kansas and Nebraska of what they are to New York.

Commissioner KNAPP. If there is nothing further from Mr. Blanchard, he will be excused.

We will now take a recess until 2 o'clock.

(The foregoing testimony of Mr. Blanchard was taken upon the first hearing of the case in the city of New York. Subsequently, at an adjourned hearing in Washington, Mr. Blanchard was further examined, and upon that examination gave the following testimony, which is more or less in reference to the Joint Traffic Association. After his testimony had been concluded and the hearing adjourned, he addressed to the commission the letter of which a copy is given in connection with this testimony. In response to this letter he was notified that it would be placed on file with his testimony, to which it related.)

Mr. KERNAN. I want to ask Mr. Blanchard one other question. This table put in evidence by the defendant just now as to east-bound tonnage and west-bound, could you have that verified as to the figures it contains and continued down to the present time from the records of the Joint Traffic Association?

Mr. BLANCHARD. I think so. I think there has been no change in the methods since I have been there, which is since the 1st of January, 1896. My impression is I could verify this very promptly.

* * * * * * *

Mr. KERNAN. One other question. In your testimony on page 451 I see that you state that "when the managers recommend any rate or fare, a circular embodying that action is issued by me as an officer of the managers, as provided in that contract." Can you state to what extent circulars have been issued under that provision in accordance with that suggestion?

Mr. BLANCHARD. That relates only to freight matters?

Mr. KERNAN. I only wanted it as to freight, not fares.

Mr. BLANCHARD. About 1,200 circulars have been issued, I think—freight circulars, relating to freight matters.

Mr. KERNAN. Of these how many would relate to the rates we are investigating here between Chicago and points in the West, taking Chicago as the basis of rates to the seaboard upon these commodities, grain commodities?

Mr. BLANCHARD. I could not tell without going through a great number of them.

Mr. KERNAN. Would it be practicable for you to give us those as a supplement to your testimony?

Mr. BLANCHARD. These east-bound circulars?

Mr. KERNAN. I do not want to go outside of this investigation. Those which simply, in your judgment, would bear upon the question of the differential—that is, the Chicago rates and those from common points in the West to New York and the ex-lake rates.

Mr. BLANCHARD. Do I understand your question to be, would it be practicable?

Mr. KERNAN. Yes, sir. Could you give us those?

Mr. BLANCHARD. Yes, sir.

Mr. KERNAN. If you could do that I wish you would.

Mr. FISHER. Are you asking for the number of them? I did not clearly understand your question.

Mr. KERNAN. No; give us the circulars or copies of them and any changes made from time to time in reference to those differentials which we are inquiring about. If you can give us those, or a copy of them in connection with your testimony, I should be glad to have them. I did not observe that until this morning in looking over your testimony.

Mr. BLANCHARD. There is one feature I would like briefly to refer to. I am simply the custodian of those circulars. I personally favor the delivery. I stated, I believe, in my testimony, which was revised, that upon the approval of the association I would make those deliveries.

Mr. KERNAN. I assume you would present the request and be authorized to do it in the regular way. We do not want to get you into any trouble about it, and if the association authorizes you to send them, that then you advise us and send the copies in connection with your testimony. That is all I want to ask you.

The CHAIRMAN. What further is to be done with the case? I may state here that we have requested some circulars that have practically been refused to be furnished—Mr. Blanchard has—and when we see the circulars you ask for it may be all we will require. If, however, we think there are some further circulars or copies or memoranda or records of the association that are necessary, we will take such steps as we think will get them.

Mr. KERNAN. Mr. Blanchard mentioned something last night about circulars. I did not know whether it was about this matter or some other matter; but inasmuch as he mentioned something about it, we thought this would make his testimony complete so far as we cared to have it.

Mr BLANCHARD. Mr. Chairman, if I have left the impression upon your mind as is indicated by your statement, I would beg leave to correct it.

The CHAIRMAN. Undoubtedly you may do it.

Mr. BLANCHARD. To go back a little, I think the assistant secretary of the commission came to me at the close of the testimony in New York and said that it was in contemplation to ask for these circulars, and inquired whether they could be furnished. During my testimony I stated the same thing. I then had the honor to receive a letter from you, dated the 8th, asking for circulars; but the letter was of such a character that I thought it was broader than the original proposition and the circulars referred to now by Mr. Kernan. It was not intended to convey the impression of a refusal of this information. The circulars I issued relate to east-bound and west-bound matters, passenger and freight, to storage, to milling in transit, and an infinite variety of other things relating to the conditions of transportation. They refer to traffic to and from Buffalo and various other termini. The circulars on the east-bound traffic over the New York Central into Buffalo relate to State traffic. The same thing is true as to the Pennsylvania in and out of Pittsburg. And the purpose of the correspondence I had was to ask if you would kindly designate whether you wanted all those circulars or only those relating to this hearing. That was the purpose of my correspondence.

The CHAIRMAN. We wanted those circulars that you introduced in this hearing with your testimony. The complaint charges that, in respect to shipments to the seaboard, the railroads have given undue preference to other ports as against New York; and then it makes the additional charge that they have done this through this association, and in your testimony you explained that it had not; that all they had done was to make certain recommendations, which anybody might obey or disobey. Now, it occurred to us that it was barely possible you were mistaken as to the nature and effect of the circulars and what they had offered to do, and we wanted to see for ourselves what they offered to do, and to see what it amounted to; and that is what we asked for, and that is what we expect to get.

Mr. BLANCHARD. Then the inquiry from Mr. Kernan covers your demand?

The CHAIRMAN. We will see what Mr. Kernan gets. We want the circulars that relate to the charge here in this matter of giving undue preference to these other ports, and all the rates and charges that affect and apply to that question.

Mr. FISHER. When you furnish those circulars do you propose to furnish copies to counsel?

Mr. BLANCHARD. Yes, sir; we have copies.

Mr. KERNAN. When would it be convenient for you to let us have those? I ask you with reference to the time to be fixed for summing up the case.

Mr. BLANCHARD. I think I could furnished them by the close of next week. They will all need to be verified and segregated.

Commissioner PROUTY. You say that any member of the Joint Traffic Association is free to accept the recommendation of the association or not?

Mr. BLANCHARD. Yes, sir.

Commissioner PROUTY. In how many instances has any member of the Joint Traffic Association refused to accept the recommendation of the association?

Mr. BLANCHARD. None. I think there is no instance where a member has declined to accept it.

Mr. KERNAN. In connection with the last question, you stated there was a universal observation of the recommendations made——

Mr. BLANCHARD. No; I do not think I put it that way. I said in no case had we had a dissent.

Mr. KERNAN. Yes, sir; in no case a dissent. Can you state fully as to how it is that the Joint Traffic Association secures the fulfillment of the recommendations and a compliance on the part of the railroads with them? You have not covered it fully.

Mr. GREEN. I suggest to you, Mr. Kernan, that the written document will answer that question—the Joint Traffic Association agreement.

Mr. KERNAN. I only wanted to know if there is anything beyond that agreement which is used as a means of enforcing the acceptance of the decision.

Mr. BLANCHARD. The only way we have of knowing whether the recommendations are accepted are the published tariffs. The contract and the published tariffs are all the knowledge we possess.

Mr. KERNAN. Does the Joint Traffic Association agreement state all the means that are employed for the purpose of enforcing the acceptance of the recommendation?

Mr. BLANCHARD. All except the conferences from time to time held with the railroad companies and with the shippers in connection with the railroad companies.

Mr. KERNAN. I mean all the measures that can be taken by the association as against one of the members of the association who might dissent from the acceptance of the recommendation. The traffic association agreement states that?

Mr. BLANCHARD. The contract states that.

Mr. KERNAN. That is all.

ARLINGTON HOTEL, *Washington, D. C., May 20, 1897.*

Mr. E. A. MOSELEY,
Secretary Interstate Commerce Commission,
Sun Building, Washington, D. C.

DEAR SIR: I would like to make a slight correction and addition to my testimony of to-day. Upon being asked by Commissioner Prouty if any companies had dissented from the recommendations of the managers, I said I did not recall any. I would like my answer to stand as follows:

"I have no recollection of any dissent from the recommendations of the managers which has proceeded to the lengths provided in the contract of organization, by which a board of directors may decline to put into effect such recommendations, but we have received a great many dissents from the suggestions or actions of the managers in the nature of protests, requests for hearings, and for recommendations, and we have in all cases given heed and consideration thereto, and have modified a great many recommendations in accordance with such dissents."

Will you oblige by advising me at the Arlington Hotel if there are any objections to my correcting the testimony to the foregoing effect.

Very truly, yours,

G. R. BLANCHARD.

After giving his testimony upon the first hearing at New York, Mr. Blanchard requested that he might be furnished with a copy of the same for revision. He subsequently returned this testimony, to use his own language, "as revised and extended." An examination of the testimony, after being so revised and extended, exhibited some very considerable differences between that and the testimony as originally given, and these differences were so considerable that the commission has treated the stenographic report of his testimony as first written out as his testimony in the case. We append hereto a copy of his revised and extended testimony as furnished by him.

GEORGE R. BLANCHARD, a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. KERNAN. Where do you reside?

Mr. BLANCHARD. In New York City.

Mr. KERNAN. You are connected with the Joint Traffic Association?

Mr. BLANCHARD. I am, as its commissioner.

Mr. KERNAN. And you have occupied that position for how long?

Mr. BLANCHARD. Since the association was organized, January 1, 1896.

Mr. KERNAN. And prior to that time what experience generally had you had in railroad matters, and especially with reference to rate matters?

Mr. BLANCHARD. For about eight years I was the commissioner of the Central Traffic Association, at Chicago. Prior to that time I had occupied positions with the Erie Company as general freight agent and vice-president. Still earlier I was general freight agent of the Baltimore and Ohio. Prior to that time general freight agent of the Central Ohio Company, at Columbus, and the Ohio and Mississippi Company, at St. Louis.

Mr. KERNAN. And this service that you have mentioned covered about how many years in the aggregate?

Mr. BLANCHARD. About thirty years.

Mr. KERNAN. Now, when the Joint Traffic Association first began business, went into operation, it found in existence in the rate sheets these differentials which we have talked about?

Mr. BLANCHARD. Yes.

Mr. KERNAN. And it did nothing at that time except to accept the rate sheets as they were with these differentials in them?

Mr. BLANCHARD. That is all in that respect.

Mr. KERNAN. And it has not since that time sought in any way to change the difference, but simply to enforce them as it found them?

Mr. BLANCHARD. We have not acted to change them, but have had them under advisement and consideration.

Mr. KERNAN. Now you may just briefly give us an idea of how the Joint Traffic Association carries on its operations under the agreement which is on file with the commission; what its agencies are for carrying out what that agreement provides shall be done under the agreement.

Mr. BLANCHARD. The Joint Traffic Association, as its contract shows, required that the railway companies which were parties to it should file with it the tariffs they had in effect the 1st of January, 1896, which came under the jurisdiction of the association, which the boards of directors of the various companies comprising the association approved, and which had been published and filed according to law as to interstate traffic. This was in order to establish starting points for the maintenance of the rates thus published. Some of them have since been from time to time reconsidered when any changes in them have been desired by the carriers or the public. Briefly, that is the foundation and procedure.

Mr. KERNAN. The object of the association mainly is to enforce the rates they have in operation, and as modified from time to time, in so far as they may do so lawfully?

Mr. BLANCHARD. The authority of the managers, as shown by the contract filed with the commission, is only recommendatory to the constituent companies. The boards of directors of those companies reserved all their charter and other rights and powers. When the managers recommend any rate or fare a circular embodying that action is issued by me as an officer of the managers, as provided in that contract. The legal changes in rates or fares are then set forth afterward in the tariffs issued by the companies which decide to conform to such recommendations.

Mr. KERNAN. And the object is to procure the maintenance of the rates?

Mr. BLANCHARD. The purposes of the association were and are to maintain the rates that have been thus legally made, changed, and filed, to make common and uniform rules and classifications relating to such rates and fares in order to secure uniformity in the methods of conducting the competitive business, and, as our con-

tract recites, not idly but sincerely, to cooperate with the interstate commerce act and with those who administer it.

Mr. KERNAN. To do what they could within the law to maintain rates?

Mr. BLANCHARD. Yes.

Mr. KERNAN. And from time to time to meet the changed conditions by recommending such changes as they might think fit?

Mr. BLANCHARD. Quite so; under the same rules of uniformity, equality, and legality.

Mr. KERNAN. Now, with reference to the differentials, you say they have taken no action as to changing the differentials?

Mr. BLANCHARD. None as to actual changes.

Mr. KERNAN. Now, prior to January 1, 1896, is it true that the full extent and observance of the differentials, as a rule, had been that they were printed in the rates scheduled and in a desultory way sometimes observed and sometimes not?

Mr. BLANCHARD. It was my belief, judged from my experience, that the schedules of rates published were not maintained in all instances before 1896.

Mr. KERNAN. So that, as a general proposition, it may be stated, may it not, that prior to January 1, 1896, the differentials had not been sufficiently enforced for long enough periods to enable us to test their effect upon the movement of traffic from interior points to the different Atlantic ports?

Mr. BLANCHARD. I believe that is a correct inference from the rate situations then existing. I believe that such irregularities in rates affected the value of the comparison of the results of the 3 and 2 cents below New York for various periods and at different points of shipment and destination.

Mr. KERNAN. And that arose from the irregularities which in one way or another permitted the differentials to be violated?

Mr. BLANCHARD. It arose from so many causes that it would be difficult to generalize.

Mr. KERNAN. Well, irregularities in one way. I will not say irregularities, from the fact that in one way or another, either through remission of elevator charges or through some means, the differentials had not been maintained.

Mr. BLANCHARD. I think that is substantially a correct inference, but I have no positive knowledge. The differentials were not always observed and the irregularities were the products of concessions alleged to exist in various forms, rates, weights, elevator charges, switching, lighterage, manipulation of the proportions of the roads west of those composing the Central Traffic Association, etc., as well as direct concessions. For example, if a company west of the Mississippi River saw fit to carry through St. Louis instead of via Chicago it might make some concessions, presumably in its own interest, to do so. I do not, therefore, mean that such irregularities were always attributable to our lines.

Mr KERNAN. Now, after the 1st of January, 1896, the association, in such ways as it deemed it might lawfully do, did undertake to eliminate these irregularities and bring about a maintenance of the rates?

Mr. BLANCHARD. In the exhaustive comparisons made of some 86,000 freight tariffs filed under our contract, various inharmonious rates, rules, and regulations appeared. The legal rates were, therefore, sought to be unified as well as the rules, regulations, and conditions, classifications, quantities constituting minimum car loads, etc., which had grown irregular with different railways, as for example, different in Canada from the rates and classifications in the United States in some instances. I instance cartages in Canada and Michigan. All these disparities were sought to be corrected to uniform methods through this association on its traffic. We, therefore, took up the important questions which constituted essential elements of total uniform charges—such as the mileage of private cars from which it was possible that their owners might make allowances to their patrons apart from the railroads. Elevator charges, lighterage charges, delivery charges at Chicago and elsewhere, switching charges, cartage, and other items were considered. These engaged the attention of the association with a view to reviewing the leading elements which properly enter into making rates and charges alike by all like routes between the same points. For example, in connection with elevator charges at seaboard points, those charges were equivalent to slightly more than 2 cents per 100 pounds, estimated on wheat at 1½ cents per bushel. Such charge was more than the differential rate to Philadelphia below New York, and it was as important to maintain those terminal charges or the changes in them as the differential rate itself, and slightly more so.

The Joint Traffic Association reviewed those essential elements of charge and entered into correspondence with the roads having ocean termini, from Montreal to Norfolk, with a view to securing uniformity of terminal as well as transportation charges in accordance with the spirit of the law, the action of the various boards of trade, and our articles of organization, especially as the seaboard terminal charges had been authorized in some instances by trade exchanges, in other instances by

private corporations apart from the carriers, and in other cases by elevators built by the railroads and leased to persons or firms. Our association does not determine or change those charges. These collateral conditions were complicated by some connecting steamship contracts, as, for example, the privileges granted by some elevators to ocean lines different from those granted by others at the same or other ports. Our board has sought strenuously and carefully to equalize such considerations before they could determine the actual effect of the port differentials above or below the standard or New York rates east bound and westward.

Mr. KERNAN. And the object of this action on the part of the board was the maintenance of the scheduled rates as they were filed with you by the different roads, including these differentials, and in order to finally reach a position where a clear test could be made, under fair conditions, at all points of origin and at the ports, of the effect of the differentials?

Mr. BLANCHARD. I can repeat your question as my answer, and as a substantial and leading purpose of the association.

Mr. KERNAN. Now, during 1896, is it true that as the result of the recommendations of the board in the direction that you have suggested, that there came about a more uniform enforcement or maintenance of the rates, as per schedules that had existed prior to that time?

Mr. BLANCHARD. It is my belief that the Joint Traffic Association has by its efforts, and the good faith of the companies which compose it, more nearly secured the maintenance of uniform through rates than has been secured by any other means at any recent time, unless it may be the first eight to fifteen months after the passage of the interstate commerce law.

Mr. KERNAN. And, may we not assume therefore that as the result of that, that the year 1896 is on the whole the fairest test of the differentials that we have since 1882—so far, I mean, as their maintenance through the action you have suggested is concerned?

Mr. BLANCHARD. I think the average maintenance of rates to the various ports (on the traffic which I understand to be the subject of this inquiry) was more nearly accomplished during the calendar year 1896 than in any other year—I would not say since 1882—but say after the first year following the passage of the interstate act.

Mr. KERNAN. So that, with the exception of the year you have mentioned, we may fairly look at the statistical returns of the movement of traffic in 1896 for the purpose of determining the effect of the differentials better than to any year prior to 1896 that you can mention?

Mr. BLANCHARD. So far as the railroads constituting our association are concerned I answer yes, judged by their acts and by their assurances. Please understand that the Norfolk and Western and other lines south of that line are not members of our association, and I do not intend to say that their rates or those of other nonmembers in or exterior to our association averaged better in 1896 than in other years. I have no real knowledge of their condition, but am speaking of our lines.

Mr. KERNAN. The papers yesterday stated that the Norfolk and Western has come down now.

Mr. BLANCHARD. The Norfolk and Western has wisely agreed to cooperate with us as to certain west-bound rates—no eastward. The matter you have in hand has not been touched upon except in the most general terms.

Mr. KERNAN. Now, has the action of the association, in its recommendatory capacity, as you have suggested, extended in any degree to equalizing the elevator charges at New York as made by the railroad elevators, the floating elevators, and the Brooklyn Warehouse Company?

Mr. BLANCHARD. As to the Brooklyn Warehouse Company, I have no knowledge.

Mr. KERNAN. As to the floating elevators?

Mr. BLANCHARD. The floating elevators and stationary elevators at the seaboard termini of all the lines, members of our association, and their eastward connections, agreed to observe substantially uniform schedules according to their prior published tariffs of charges and storage periods, notifying us of any changes therein.

Mr. KERNAN. That was a new condition, substantially, in 1896, to wit, that the railroad elevators, that is the floating elevator combination in the harbor here, was induced to unite with your efforts in maintaining a uniform cent and a quarter charge for elevation?

Mr. BLANCHARD. I understood they would so cooperate.

Mr. KERNAN. And that, of course, has resulted in eliminating such diminution of charge as prior to that time the floating-elevator combination might have been in the habit of making?

Mr. BLANCHARD. I do not know anything about their concessions prior to that assurance, but after that time they agreed, as stated, at all points of export.

Mr. KERNAN. But, if prior to that time they had been in the habit of charging less in whole or in specific instances, that was eliminated by this action you mention?

Mr. BLANCHARD. So I understand.

Mr. KERNAN. And the object of that was whether there should be maintained at each port for the elevation of grain, whether through railroad elevators or through floating elevators, a uniform charge of 1¼ cents per bushel?

Mr. BLANCHARD. I think it was a uniform charge of 1¼ cents on most grains, but may have been different on oats, and the storage periods were not in all cases alike.

Mr. KERNAN. And that would also tend, as far as it was accomplished, to maintain these differentials in their integrity?

Mr. BLANCHARD. When I refer to better maintenance of legal rates in themselves, I include all the elements that enter into and complete uniform charges. As long ago as the agreement of April 5, 1877, between the trunk lines to and at New York, Philadelphia, and Baltimore, it was "agreed that the cost to the shipper of delivering grain at each port from the terminus of each of the roads to the vessel in which it is exported, as well as the number of days free storage allowed thereon, shall be the same." It was then, as now, regarded as an important rate factor.

Mr. KERNAN. How long have you been familiar with the differentials at Buffalo, Erie, and Fairport on grain to New York, Philadelphia, and Baltimore?

Mr. BLANCHARD. During the years I was in Chicago I had no direct familiarity with them, as that traffic did not come under our knowledge or supervision. Since the organization of the Joint Traffic Association it only passes under its general review. That subject continues under the immediate supervision of the Trunk Line Association, which makes its recommendations to our association.

Mr. KERNAN. Then those lake differentials have been the subject of agreement between the trunk lines interested at the ports of Erie, Buffalo, and Fairport?

Mr. BLANCHARD. By the lake differentials I understand you to mean the differentials east of Buffalo, Erie, etc.

Mr. KERNAN. From the three ports.

Mr. BLANCHARD. Yes; they have been the subject of agreement between the interested lines.

Mr. KERNAN. We find those deferentials, Mr. Blanchard, to be a cent and a half a hundred on grain in favor of Philadelphia as against New York, and a cent and a half on grain in favor of Baltimore.

Mr. BLANCHARD. Yes, I think they are.

Mr. KERNAN. We find that as between Philadelphia and Baltimore, that instead of maintaining the Chicago differentials, giving Baltimore a cent the advantage of Philadelphia, that the ex-lake rate seems to be based upon the idea that there should be no difference between Philadelphia ond Baltimore. Can you tell me why that is?

Mr. BLANCHARD. I can not state all the reasons which actuate the Trunk Line Association in their recommendations. The general principle is, taking Erie as an example, when traffic goes via Erie to Philadelphia, all rail, the differentials from Chicago to Philadelphia and Baltimore were the same as via the more direct rail lines. When the like grain originated at the same Western points and reached Erie or Buffalo by lake, it has enjoyed the same differential rates therefrom as if the property went through all rail. That was the general basis upon which the interests met and considered the ex-lake rates. When the Baltimore companies, for example, met the various lines in such conferences they yielded that claim to the extent that the rates to Baltimore might be put up to the same rates as to Philadelphia from those lake points.

Mr. KERNAN. Is it not true that that differential can not be based upon distance, inasmuch as there is no difference in distance practically?

Mr. BLANCHARD. I do not understand your question.

Mr. KERNAN. Is it not true that the differentials are not based on distance? Is there any authority on the distance principle for the basing of differentials?

Mr. BLANCHARD. The distance principle is but one of numerous important factors in the whole question of differentials. They are not based upon various distances, altogether. Distance is, of course, an important element of rates, but does not decide them, because lines of different lengths must carry at equal rates.

Mr. KERNAN. Can it be based upon differences of cost?

Mr. BLANCHARD. In my judgment, no; although cost is another important factor in rates. I do not think any expert can compute the cost of transportation of any particular large traffic, like grain, between any given points, or the differences of cost via different routes. The Pennsylvania Railroad, for illustration, may carry 80 per cent of all its tonnage in mineral, stone, lumber, and coarse articles, mainly loaded by forwarders and unloaded by consignees, often on sidings they provide. In arriving at its average carrying cost, that major traffic is, of course, included, and thereby reduces the general average of its total ton-mile cost. All railways report averages, therefore some costs must be greater than others. When, therefore, you take the Pennsylvania Railroad Company's general average and apply it to its west-bound dry goods or east-bound grain movement, I do not think anybody entitled to your credence will tell you that such average is actually applicable to all classes of its business both ways. Its New York division and terminals may cost 50 per cent more

to operate than an equal number of miles elsewhere on its routes and through other terminals.

On the New York Central the conditions may be reversed if only 20 per cent of its traffic is in minerals, etc., and if its cost of movement is thereby increased. Its New York terminal cost is, for example, included in its average, but no such terminal expenses are incurred by it on the large tonnage it carries to and from Boston. It is therefore impossible to tell by any average of any one railroad to different points or by the average of them all what it costs one or all to transport any particular proportion of its own traffic or all the business. Their local traffic and conditions also differ greatly.

Mr. KERNAN. Can you tell me any fairer way to test these differentials as to cost than to take the average cost per ton per mile of the Pennsylvania, say of 4 mills per ton per mile in 1896, inasmuch as it has lines to these three ports of Baltimore, Philadelphia, and New York? That may not be a correct way, but can you tell me any better way by which we can test the differentials by the cost question that is obtainable?

Mr. BLANCHARD. If an assumed cost is to be used to state a basis of fixing different rates to the various ports, I should say, for the reasons I have given and others, that instead of taking the Pennsylvania Company alone it would be fairer to consider all the lines leading to the seaboard and to begin at the Western starting points.

Mr. KERNAN. And that cost averaged?

Mr. BLANCHARD. Yes; and average that cost. Even then the different conditions I have suggested would make the average misleading. Some companies or routes might be above and others below such average; yet they all carry freights and must do so at substantially uniform rates between the same points.

Mr. KERNAN. Have you attempted, in the traffic association, to do that?

Mr. BLANCHARD. We have kept no such statistics. They would be largely conjectural, and therefore of small value.

Mr. KERNAN. You repudiate both the distance and cost questions as being practical ones to test this question?

Mr. BLANCHARD. I think they are, at best, only approximations.

Mr. KERNAN. Is it not true that the object of the differentials is to obtain an equitable distribution of the traffic to the six Atlantic ports, so as to give to each port that traffic which, under normal conditions, it would obtain? So as to, in other words, recognize the advantages at each port, and to allow each port to get the share which its natural advantages entitle it to?

Mr. BLANCHARD. Generally, yes; but may I explain. When I was general freight agent of the Baltimore and Ohio Company the differentials were never distinctly agreed to, but as I remember them the grain rates from the Southwest were 10 cents per 100 pounds less to Baltimore, and in some cases to Philadelphia, than to New York, and from the Northwest 5 cents less. A trial was also made in 1876 of rates, Chicago to Baltimore 13 per cent less than to New York, and 10 per cent less to Philadelphia, and from Cincinnati to Baltimore 24 per cent less than to New York, etc. That plan promptly resulted in manifest irregularities between localities and was speedily abandoned. Mr. Vanderbilt and the New York lines took this question up with a view to equalizing those differences, and the petitions here to-day are substantial duplicates of those made in 1879 and earlier. The differential rates were contested and the subject was considered by all companies, and the differentials were reduced voluntarily by the lines to Baltimore and Philadelphia.

Mr. KERNAN. That is what they ought to do now.

Mr. BLANCHARD. If you can persuade them to do that the Joint Traffic Association will be relieved of much trouble. I think the differentials ought to take into consideration fairly all the elements at all points. The question is an important one to all interests which are rival in the opening and development of the older as well as the newer ports. The twenty years which have elapsed since the agreement of 1877 and the fifteen years since the Cooley award are long commercial lives for such great questions, and if the conditions differ from the fair grounds then considered they should be now as fairly reviewed by the same parties. Taking Chicago on the west and Liverpool on the east as examples merely, I believe it is the desire of the traffic managers of the lines and the managers of the Joint Traffic Association to establish such conditions that the rates to various points of export, plus uniform charges attaching at the ports of export, and considering all elements involved, shall constitute deliveries substantially at common rates, Chicago to Liverpool.

This result must, of course, be averaged from all points to all ports and foreign destinations. Consideration must be given to all elements, and consideration affecting or determining rates, such as the character of vessels, frequency of sailings, insurance, berthing facilities, ocean charges, speed, etc. That ought to be the general purpose, and I believe it is with all reasonable interests. In that view of the case I have had no reason to doubt that inasmuch as the changes of differential rates have heretofore been brought about without legislative assistance, that with the

advice and counsel of various boards of trade, and through conferences, concessions, agreements, and consideration among the railroads which compete, that when our association had data enough to show that rival rates were maintained the subject should then be taken up by them and in the same spirit as before. For my own part I would welcome such a discussion, believing such consideration and solution will be of as much value to all interests as were the previous adjustments. Any basis of differentials must, however, be in some measure arbitrary and hypothetical, because ocean rates from various points to the Atlantic ports via various routes and to the same as well as different foreign destinations will frequently differ under different circumstances, such as the tonnage available, quantities and proximities of crops to the export ports, seasons, port charges, etc. By reason of these shifting conditions some general or average basis must be arrived at. It is a complex question and difficult of solution.

Mr. KERNAN. I would like, right in line with that idea, to ask you whether, first, have you looked through the statements and tables and one thing and another which we have prepared?

Mr. BLANCHARD. I have not had time since you sent me a copy of your plea and its accompanying statements.

Mr. KERNAN. Could you suggest any line of investigation or of statistics in addition to those we have prepared which would throw light upon the question and enable us to reach a fair determination?

Mr. BLANCHARD. I would like to answer that question at some length. The statistics kept by Mr. Fink were elaborate. It has been commented on here, for example, that the rate to Boston for the longer distance is made the same as to New York. For that criticism to have weight the sources of the traffic ought to be known, and were shown in his tables. For example, wheat grown in Michigan may go to Boston upon a less distance than to Baltimore, while corn from southern Illinois may reverse the mileage advantage. Unless, therefore, we know the sources of the tonnage and its destinations and then reduce it to ton-miles traversed over each route all else is more or less conjectural.

Before the Joint Traffic Association was organized many former statistics were dropped, and we have never renewed them—indeed, we have discontinued some of them. For instance, new lines and elements have come in at St. Louis since Mr. Fink's statements to which you attach importance. There are lines open to the lakes and south of ours which were not then in existence, and are not now in our association. They do not report their traffic, and we have no means of knowing how much their tonnage is, where it originates, or where it is destined. We have no means, for further example, of knowing as to our own traffic that which really originates in Illinois, because grain from Kansas and Nebraska comes with charges prepaid or made local to the Mississippi River, and may appear thence as Illinois traffic. Without going into the refinements of these questions, these are sample difficulties in giving you the sources of business, ultimate destinations, or average lengths of haul. A similar difficulty met the statistician of the United States. I asked him if he could tell me how much of the grain which came to New York by canal was for home consumption or domestic reshipment and how much for export, and he stated he could not. We also must generalize in the manner I have cited, in taking Buffalo as a starting point and making the rates thence to some one destination the unit and adapting others thereto. It will give me pleasure, with the approval of our board, to go through your tables, to assist this investigation, and to make suggestions.

Mr. KERNAN. That is what I wanted to ask you to do. Mr. Fink made a report on this adjustment of transportation to the seaboard in 1882. There are certain tables in that report based upon the traffic of 1880, and especially at the close of the report he gives us a table showing the origin of the traffic in the West just as you suggested; in other words, he said just as you do—in order to determine the question with justice to all, one of the elements to be known is the origin of the Western traffic.

Mr. BLANCHARD. Yes, clearly.

Mr. KERNAN. If we wanted to find out whether Duluth traffic—wanted to find out the tonnage of the Duluth traffic, and then wanted to find whether New York is getting that traffic or whether it is deemed diverted, for instance, to a point like Baltimore, we might find out in that way fairly whether Baltimore has invaded our parish and taken from us traffic which we ought to have. Now, would it be possible to substitute for the table of that nature which you have there one showing the conditions in 1896?

Mr. BLANCHARD. Many present conditions differ from those which prevailed then. For example, the grain that comes to Buffalo now largely changes hands there. Originally it came through on through rates. I do not know that we have any means, as to the large business which arrives at Buffalo by lake, of telling in what area it originates, because the lake carriers act independently in this respect. They are not in our organization. It would, therefore, be more difficult than it was in

Mr. Fink's time, when so large a part of the lake business was through business at through rates. At St. Louis new lines also divert a considerable business south of the Ohio River, and do not report fully. I will be glad to take Mr. Fink's statement and examine it and assist you as I can.

Mr. KERNAN. The extent, it seems to me, to which it would need to go would be to take the traffic delivered to the six Atlantic ports and then ascertain the origin of that traffic—the real origin.

Mr. BLANCHARD. Has not the produce exchange the sources of the traffic which comes from Buffalo ex-lake? Where the charges are paid up to Buffalo we must treat such grain as if it grew in the fields near Buffalo—that is, locally. We do not know where it came from and can not ascertain, nor do we care to know.

Mr. KERNAN. I was speaking of the differentials from Chicago. If we could get the origin of that traffic, that is what we want. The ex-lake traffic is not material. The origin of the ex-lake traffic is Buffalo, Erie, and Fairport. The question we want to get at is whether or not, under the operation of the differentials, that traffic to which we are entitled under normal conditions—that is, a certain share—is not being diverted by the differentials to the southern ports. Can you give the amount of all that traffic—of the percentage going to each of the ports?

Mr. BLANCHARD. From each general source of origin?

Mr. KERNAN. From Buffalo, Erie, and Fairport as ports of origin.

Mr. BLANCHARD. I think that is shown in our statements.

Mr. BLACKMAR. I think Buffalo, Erie, and Fairport can be treated as one point of origin.

Mr. BLANCHARD. The same reason holds at Chicago. We do not know whether grain sent from elevators there came from Winnipeg or San Antonio.

Mr. KERNAN. Will your statistics show the distribution of the traffic?

Mr. BLANCHARD. From Chicago eastward, generally, but not the sources of origin.

Mr. KERNAN. Will the statistics show it at Buffalo?

Mr. BLANCHARD. At Buffalo, I think so; that is, the destinations by States or districts.

Mr. KERNAN. Can you show the distribution of the traffic at Chicago and Buffalo, Erie and Fairport? Can you give us that?

Mr. BLANCHARD. I think so, but will look into it.

Mr. KERNAN. Now, taking flour at Minneapolis, the distribution of that could be given, could it not?

Mr. BLANCHARD. That would have to be supplied by the roads west of Chicago, because some of that traffic passes over the Soo and Canadian Pacific and Ogdensburg routes and does not come into our statements. You can probably obtain that information in the West.

Mr. KERNAN. Is not the same thing true regarding Chicago as a point of origin? Would it not be practicable to show the distribution of traffic as to Chicago as to origin to those six ports?

Mr. BLANCHARD. That would be very difficult.

Mr. KERNAN. If you would give us that we would be very glad to have it. How would it be as to Duluth as the point of origin?

Mr. BLANCHARD. We have nothing to do with Duluth, except as it may be shown in the Buffalo, Erie, and Fairport statements. Even there it all comes into one bulk and would not show Duluth separately.

Mr. KERNAN. We have taken the position on this statement that the canal, as an element to be considered on this question, has been very much eliminated since 1882. That is due to the fact that the percentage it carries has become so small that these differential rates or railroad rates must be considered now substantially with railroad conditions, and are not to any great extent influenced by the canal conditions. Now, what do you say as to that?

Mr. BLANCHARD. I must dissent from that view. The business by canal last year, as I recollect it, was approximately 17 per cent of the total receipts at New York, and this came in a short period of about seven months. It was a much larger percentage for the period the canal was open.

Mr. KERNAN. Six per cent of the total of all these ports?

Mr. BLANCHARD. Six per cent of the total of the reporting Atlantic ports, but 17 per cent of the total arrivals at New York for all of 1886. Even one-half that proportion, or less, might, and probably would, determine the rail rates from Buffalo to New York, and incidentally from all lake ports to all seaboard cities. Moreover, the canal proposes this year to compete for the carriage of flour.

Mr. KERNAN. Now, when you assume that the canal is a competitor, not only of grain and corn, and to a limited extent of such gross articles as lumber and to some extent coal, does it not follow that at least as to all rates except those as to flour and grain that the canal has ceased to be a factor to be considered in determining this differential question?

Mr. BLANCHARD. With the exception of coarse freights to which you allude, with

some iron ore and other things—stone, fertilizers, and coal—added, the canal is not the strong factor it was in 1882.

Mr. KERNAN. In other words, at high rates it has been demonstrated, has it not, that the rail carriers to New York and Philadelphia and Baltimore can, as against the canal, take substantially all the traffic, both east bound and west bound, except those articles which you have mentioned?

Mr. BLANCHARD. That depends upon the relative differences in rates.

Mr. KERNAN. I say at rates slightly higher than canal rates. Of course there is a limit beyond which you can not raise the rates without invoking canal competition.

Mr. BLANCHARD. Yes.

Mr. KERNAN. That is all, I think.

Mr. LOOMIS. Mr. Blanchard, I am told that the existing rate on wheat and oats from Chicago to New York is 20 cents per hundred. Is that right?

Mr. BLANCHARD. Yes, sir.

Mr. LOOMIS. And that the existing rate on the same commodities, Chicago to Newport News, is 17 cents per hundred. Is that right?

Mr. BLANCHARD Yes; and also to Baltimore.

Mr. LOOMIS. I am told that the rate from Chicago to Newport News is made by the publishing and filing with the Interstate Commerce Commission, and at other places as required by law, of a tariff by the company called the Big Four, and the acceptance of that tariff by the Chesapeake and Ohio Railroad Company, reaching to Newport News. Is that right?

Mr. BLANCHARD. Yes; the Cleveland, Cincinnati, Chicago and St. Louis Railroad, which is called the Big Four.

Mr. LOOMIS. And the Chesapeake and Ohio?

Mr. BLANCHARD. Yes, sir; as a connecting line.

Mr. LOOMIS. The first-named company issues a tariff showing this?

Mr. BLANCHARD. Yes.

Mr. LOOMIS. And the second company accepts it?

Mr. BLANCHARD. Yes; its concurrence is shown in the tariff.

Mr. LOOMIS. Now, that rate continues until these two companies change it. Is not that so?

Mr. BLANCHARD. Their and our understanding is that they will issue the same differentials to Newport News that have been heretofore granted under this differential adjustment to Baltimore.

Mr. LOOMIS. These two companies could diminish that rate if they saw fit, could they not?

Mr. BLANCHARD. Both the Chesapeake and Ohio and the Big Four are members of our organization and could diminish it against the recommendation of the managers, on notice of the boards of directors of these companies or of the first company.

Mr. LOOMIS. Well, if the boards of directors of the two companies saw fit to diminish the rate they could do it, could they not?

Mr. BLANCHARD. Yes.

Mr. LOOMIS. And there is nothing in the Joint Traffic Association to prevent their doing it?

Mr. BLANCHARD. Nothing.

Mr. LOOMIS. And suppose it might be assumed that if the rate were diminished to say 15 cents per hundred and there was an inducement in it to the two companies named, they might be expected to do it. Is not that so?

Mr. BLANCHARD. Yes.

Mr. LOOMIS. And those two companies could increase this rate from 17 cents to 20 cents, the New York rate, could not they?

Mr. BLANCHARD. Yes.

Mr. LOOMIS. So far as the physical fact is concerned there is no legal obstacle to prevent them. All they would have to do would be to make the new tariff and publish it and file it where by law it is required to be filed, accepting the 20-cent rate. Is not that so?

Mr. BLANCHARD. That is true.

Mr. LOOMIS. There is nothing in the Joint Traffic Association agreement or the administration of it to prevent their doing that?

Mr. BLANCHARD. Not a line or word, if notified as therein agreed.

Mr. LOOMIS. The same thing is true to all these other petitioners?

Mr. BLANCHARD. Equally true, naturally, to all ports parties to the agreement.

Mr. LOOMIS. The line from Chicago to Boston is composed in part of the Boston and Albany and the New York Central, and then the New York Central's western connections?

Mr. BLANCHARD. Yes.

Mr. LOOMIS. These companies have not any control of the rates from Chicago to Newport News, or to Philadelphia, or to Baltimore, have they?

Mr. BLANCHARD. None whatever.

Mr. LOOMIS. Now, the board of managers that considered this subject—that board consists of ten members?

Mr. BLANCHARD. Yes.

Mr. LOOMIS. Representatives of the different companies members of the association?

Mr. BLANCHAND. Representatives of the ten systems, as they are called.

Mr. LOOMIS. Ten systems, embracing several companies in each system?

Mr. BLANCHARD. Yes; usually.

Mr. LOOMIS. And they have considered this very subject, I understood you to say?

Mr. BLANCHARD. On two or more occasions they have had the subject up and given it preliminary discussion. They have had one, or possibly two, interviews with steamship companies and with the Produce Exchange committee.

Mr. LOOMIS. And this board of managers has power to make recommendations?

Mr. BLANCHARD. Only recommendations.

Mr. LOOMIS. On the subject?

Mr. BLANCHARD. Yes.

Mr. LOOMIS. Now, when you said it was one of the principal objects of the association to maintain rates, did you mean by that to prevent secret reduction of rates, cutting by rebates, etc., is that what you meant?

Mr. BLANCHARD. After a tariff has been published by the companies and filed according to law in form and previous public notice, it is the purpose of our association to thereafter prevent any undue or irregular methods which deplete that tariff secretly or preferentially.

Mr. LOOMIS. You did not, then, mean that its object was to maintain any particular rate for any particular period, whether high or low?

Mr. BLANCHARD. Not at all; we make no rates, but we recommend many. We endeavor to maintain those that are then adopted by the railroad companies, in the exercise of their power and not ours.

Mr. LOOMIS. According to the published tariff open to everybody?

Mr. BLANCHARD. The contract so states.

Mr. LOOMIS. And not to make rates which would result in an undue advantage and preference to one locality or to one individual, is that it?

Mr. BLANCHARD. That is the leading purpose of the association.

Mr. LOOMIS. That is all, sir.

Mr. FISHER. If your honors please, I would like, inasmuch as Mr. Blanchard has been requested by the petitioner's counsel to furnish some further statements, and of course these must be furnished on the part of my colleague, to reserve the right of asking any questions until after that time, especially, if your honors please, as after the petitioner has completed his examination we propose to ask the commission for an adjournment. Your honors will see, of course, the propriety and the necessity really for an adjournment. Probably the suggestion has occurred to the minds of the commissioners without any suggestion on my part.

Commissioner KNAPP. Will you say what there is, what the further information is, which Mr. Blanchard is expected to furnish, and in connection with that the time within which he can conveniently do it?

Mr. KERNAN. I understand Mr. Blanchard to say, regarding the distribution of traffic through these ports originating at Buffalo and Erie and Fairport, and also as to Chicago traffic, too, but that he could not go further than that; is not that so—could not go to Duluth—you could not do that?

Mr. BLANCHARD. No, sir. What six ports have you reference to?

Mr. KERNAN. New York, Boston, Philadelphia, Baltimore, Newport News and Norfolk.

Mr. BLANCHARD. I can not give you Norfolk; that is the reason I asked you what six ports you meant.

Mr. KERNAN. All right, the five ports, then.

Mr. BLANCHARD. Yes.

Mr. FISHER. What year did you ask for, 1896?

Mr. KERNAN. Why, the year 1896; yes, sir.

Mr. SHERMAN HOAR. I would like to have you include some ports north of Boston in that.

Mr. BLANCHARD. I think we can give Montreal and Portland.

Mr. BLACKMAR. Can you give St. Johns?

Mr. BLANCHARD. I can not state whether St. Johns is shown separately or not, or in the statement with Montreal.

Mr. BLACKMAR. But if you can?

Mr. BLANCHARD. Yes, sir; I understand it is the desire of the commission, and I will therefore do so.

Mr. FISHER. You can just as well furnish that information for 1894 and 1895 as 1896?

Mr. BLANCHARD. No; the trunk lines did not keep similar through data in those

years as they did in 1896. I can give you such partial statements as were prepared for 1894 and 1895.

Mr. FISHER. They would be only partial?

Mr. BLANCHARD. I can state them as far as they go. I can not say now how far I could go in them, but in 1896 we can give them, except Canadian Pacific tonnage and tonnage via Ogdensburg.

Mr. KERNAN. Ought it to show separately for domestic consumption and export?

Mr. BLANCHARD. We have no means of stating the actual distinction. You will find in the Chicago statement for the entire year, which I understand the commission desires furnished, that there is no certainty as to these data. Our statements show exports by weeks, but there is this difficulty in that connection. When traffic is consigned for export in some instances a higher rate may be paid, as on corn, if delivered for domestic use. Therefore, the grain which might appear in a Chicago report as export traffic may be used for domestic consumption at various ports and be charged at the domestic rates. The reverse of that is equally true, viz, that some consignments originally domestic may be exported, so that the statement will only indicate the traffic as it left Chicago and then intended to be exported. The same is true, I think, as to Boston—that is, that traffic consigned there locally may be exported or vice versa. I think Mr. Mills, who appeared before you yesterday, will confirm that view. [Mr. Mills concurred.]

Mr. BOND. You can cover in these statements other articles besides grain, can you not?

Mr. BLANCHARD. The statements that are referred to from Chicago show the traffic, not only the grain, but as to flour, cotton, iron ore, etc.

Commissioner KNAPP. Now, we understand it is the desire of the gentlemen to postpone the further examination of Mr. Blanchard until after these statements are furnished. Is that the fact?

Mr. FISHER. Yes, sir.

Commissioner KNAPP. Within what time will it be convenient for you to furnish them?

Mr. BLANCHARD. I will let you know.

Mr. KERNAN. How would it be, Mr. Blanchard, if we should ask you to furnish the same thing from St. Louis and Cincinnati; would we not then have this complete?

Mr. BLANCHARD. We could give you such as we have from St. Louis and Cincinnati, but they are incomplete for the whole year and do not include all lines.

Mr. FISHER. Then it would be, as far as Cincinnati and St. Louis are concerned, entirely incomplete?

Mr. BLANCHARD. I would not state that. Some of these data have differed at different periods. One company might stop its reports in June and the other in September, and we would not be able to tell you anything about them except for the periods when all reported alike.

Mr. FISHER. Then it would be only a partial statement?

Mr. BLANCHARD. Yes; if I furnish that, it would be a partial statement.

Mr. FISHER. Then it would be misleading?

Mr. BLANCHARD. Yes; it would be misleading, although it might be complete for the various months via our lines.

Mr. KERNAN. We have, your honor, a witness or two more in the same line that we have been calling them, regarding grain, flour, etc., and I am not altogether certain but what, after we conclude these, that will pretty much exhaust our testimony and take up the balance of to-day. I think it might perhaps be as well to make the adjournment then, if we are going to take one.

Commissioner KNAPP. I was about to inquire whether you gentlemen would be prepared to continue your examination of Mr. Blanchard immediately after he furnished that information. It occurred to me that perhaps you would want some opportunity to examine these figures.

Mr. FISHER. We would, undoubtedly, if your honor please.

Mr. KERNAN. I have no objection to that. I think after we call two or three witnesses more that will exhaust the day, and perhaps it will accommodate everybody and be convenient to your honor to take the adjournment then instead of proceeding to call other witnesses.

Mr. FISHER. Well, but no.

Mr. LOOMIS. What adjournment are you speaking of—the recess, or what?

Mr. FISHER. We propose at the end of the day, although you have not completed the examination of your witness, to ask for an adjournment of your side of the case.

Mr. KERNAN. I will then have completed all the examination of several of the other witnesses.

Mr. FISHER. You do not propose to announce, then, that you have finished your case?

Mr. KERNAN. We may put your trunk managers on the stand and examine them, but it is hardly worth while to take up that part of the examination at this time of

the week, because we could not finish the examination; but we will substantially have completed all of the class of evidence that we have been going over. We have been looking over our own witnesses, and we think we have nearly finished, and then there will only remain such further investigation as may be made by the examination of such witnesses as Mr. Blanchard and others who are familiar with the railroad question.

Commissioner KNAPP. Do we infer from that that you propose an adjournment at the close of the hearing to-day?

Mr. KERNAN. I think if there is one vacant day this week it had better be taken then.

Commissioner KNAPP. It will then be out of the question to finish the hearing of this case this week.

Mr. KERNAN. I don't think it can be done.

Commissioner KNAPP. There must, then, be an adjournment to some future time.

Mr. KERNAN. Yes, sir.

Mr. FISHER. In respect to the adjournment, if your honors please, your honors can see of course from the nature of these statistics that have been furnished by the other side, and the time that they have been furnished to us here, that we have had no time for the purpose of making any inspection; it has really been impossible to do it; and Mr. Kernan, I think, stated yesterday or the day before, that although he had had some months to prepare for the trial of this petition and for the preparation of these statistics, he had found that time too short even for himself.

Mr. KERNAN. I said a couple of weeks' notice of the hearing in which to do it, which was too short.

Mr. FISHER. Well, it is quite apparent from the testimony that has been produced that the committee of the produce exchange has had this matter in contemplation for a long period of time, and the preparation of these statistics has gone on right along. Now, there ought to be some reasonable corresponding time to enable the respondents on their part to investigate the facts which are set out in the statistics, and to produce such statistics as they want, and it seems to me, if your honors please, that an adjournment of six weeks or two months would be a reasonable adjournment in view of the magnitude of the inspection which it is necessary to make.

Mr. KERNAN. Well, I do not think the investigation ought to be postponed as far as that. It ought to be a matter of two or three weeks, or something of that sort.

Mr. BOND. You remember we live at outports, Mr. Kernan.

Mr. PETTIT. Your honors must recollect that the information contained in these statements is so voluminous that we have got to get people to look this up pretty thoroughly.

Mr. KERNAN. We will get you any information.

Mr. BLACKMAR. They have such admirable lawyers on the other side that they don't need anything to help them in the way of this information. My friend Pettit here is a first-class statistician. I have that from my own experience.

Mr. BLANCHARD. Mr. Kernan, do you want anything more from me?

Mr. KERNAN. I think that is all to-day. I am much obliged to you.

Commissioner KNAPP. Possibly we may assume that you gentlemen will confer and agree upon an adjourned date or time for taking up this case for a further hearing, and in order to facilitate you I will say that the commission is now under engagement to take up some cases through the South, beginning on the 5th of April at Savannah, which will require probably the most of the month of April, so that unless further testimony can be taken in this case next week and the early part of the following week the commission will not be able to assign you a date until after the 1st of May.

Mr. KERNAN. We can be ready to close the case and would be very glad to do it next week, and at the same time I recognize that there is reason in the suggestion which has been made by the other side, so that I have no objection to a reasonable adjournment, say to the first part of May, and in that case with the full understanding that when we meet then we will close it.

Mr. FISHER. Well, we will agree to that.

Mr. KERNAN. I should say that we ought to have an understanding to that effect, and then we should all be here prepared to close it, because we would not want to have the hearing left over to have it during the summer term.

Commissioner KNAPP. With reference to the date of further hearing, I can only say ahead that we will assign a date during the month of April. It is probable that we can take up the case for a further hearing almost any day after the 1st of May, during that month, but we appear now to be obliged to be in Chicago in June, so that about all the time we have at our disposal to visit New York in this case is this coming week, the first part of next week, and the month of May. Of course we can accommodate ourselves for a day or two, one way or the other.

Mr. KERNAN. If agreeable to the commission, why not say the 3d of May, which

is Monday, and then the commission will expect people to devote as much time during the week as would be necessary to close the evidence.

Commissioner KNAPP. It looks to us that it might be safer to name the 10th of May than the 3d.

Mr. KERNAN. Oh, yes, sir; I think we can agree to that.

Commissioner KNAPP. The second Monday, instead of the first?

Mr. KERNAN. Yes, sir; then we will understand it to be the 10th of May.

Mr. FISHER. The 10th of May.

Mr. PETTIT. If your honors please, I think that time will suit us all. Probably as this covers a section of the case, where parties interested would be liable to come from all localities, it seems to some of us that probably Philadelphia would be a more central point than New York to hear the witnesses that we will want to call on behalf of these commercial interests. They will have to come from the south as far Newport News, and as far as Boston. Your honors will have the United States court rooms there, and you will find them very comfortable and convenient, and it would be nearer the center of the case.

Mr. KERNAN. The seat of the difficulty?

Mr. PETTIT. Yes, sir; nearer the seat of the difficulty.

Commissioner KNAPP. I understand, then, that there is to be an adjournment after to-day, but that you will call two or three other witnesses this afternoon?

Mr. KERNAN. Yes, sir; we will fill up the day.

Commissioner KNAPP. You will fill up the day; and now, then, during the recess for luncheon, perhaps you gentlemen can agree as to where the next sessions are to be. If not, we will have to fix a place.

Mr. KERNAN. Perhaps so, and in regard to that I want to say to you that I think this hearing has demonstrated that no more convenient place for everybody can be found than here. All the testimony has shown that all of the large export business that we are talking about is controlled here in New York, and that it is represented by the business houses here. There is nothing else to talk about, substantially.

Commissioner KNAPP. I am only suggesting to you that you take that into consideration with the view of attempting to agree among yourselves. If you can not agree among yourselves, of course we will agree among ourselves. We will let the matter stand until after the recess. I want to ask Mr. Blanchard a question or two. You will kindly remain in session now until some questions can be asked of Mr. Blanchard.

Commissioner CLEMENTS. I understood you to say that the rates were maintained equally as well for a year or fifteen months after the interstate commerce law was passed, as during 1896; am I correct?

Mr. BLANCHARD. Yes; that is my impression.

Mr. CLEMENTS. The same differentials existed then as do now, did they not?

Mr. BLANCHARD. Yes.

Mr. CLEMENTS. You further stated, I believe, that it was your belief and your observation, from facts that have come in your possession, that tariff rates, established tariff rates, had been better maintained in 1896 than any other year except the period you referred to?

Mr. BLANCHARD. Yes; since 1887.

Mr. CLEMENTS. Now, does that statement have reference to tariff rates outside of the Joint Traffic Association?

Mr. BLANCHARD. I have no knowledge of any other roads.

Mr. CLEMENTS. You only apply that statement to your own roads?

Mr. BLANCHARD. Yes; those in our territory and to our business.

Mr. CLEMENTS. Are there some roads that carry to Newport News and Baltimore, and Norfolk and Boston, that are not members of your association?

Mr. BLANCHARD. The business to Norfolk by way of the Chesapeake and Ohio road was first included; the larger Norfolk and Western business is not included. The latter carries considerable traffic from St. Louis and elsewhere, not known to our tonnage statements. My statement was only as to the roads in our association. The road which leads to Newport News is in the association; all the rail lines to Baltimore, all the lines to Philadelphia, New York, and to Boston, and the Canadian Pacific appointed a manager on our board in July, 1896, as to its business between points in the United States, but has not reported its tonnage.

Mr. CLEMENTS. From your observation and knowledge of the facts, do you have the same belief as to the maintenance of rates to the Southern ports by way of the South?

Mr. BLANCHARD. No.

Mr. CLEMENTS. And as to this port?

Mr. BLANCHARD. My observation is that these Southern lines have not maintained the same rates through the Southern ports to New York that we have.

Mr. CLEMENTS. You mean they have not maintained the published rates?

Mr. BLANCHARD. I mean they have not maintained our published rates; that is,

our published or differential traffics. I include, generally, grain rates through Galveston and New Orleans, and to and via Norfolk, and certain new lines, such as the Asheville route.

Mr. CLEMENTS. That leads to Newport News?

Mr. BLANCHARD. No; it does not lead to Newport News, but to New York and elsewhere by steamer connections.

Mr. CLEMENTS. It is your belief, then, from these facts which you observe, that while the differentials exist as stated, the roads carrying directly to New York are maintaining the rates and the others leading to the Southern ports are not?

Mr. BLANCHARD. My observation is to that effect as applied to the observance of our traffics.

Mr. CLEMENTS. To what effect?

Mr. BLANCHARD. That the rates of the Joint Traffic Association were, during 1886, substantially maintained by its lines. My information as to the Southern rates is derived so much from hearsay that I do not like to say anything more than that I have information that freight rates have not been so regular via those outlets to or from our points, although they may have maintained the rates which they filed with your honorable board. As to that I do not know.

Mr. CLEMENTS. Then it would not follow that the change in the business was due to the published differentials or grade differentials, from that statement?

Mr. BLANCHARD. No.

Mr. FISHER. You are speaking of the Gulf port roads, are you; the roads leading to the Gulf ports?

Mr. BLANCHARD. Yes; all ports from the Gulf at Galveston up to Norfolk.

Mr. FISHER. You are speaking of the Southern roads?

Mr. BLANCHARD. Yes.

Mr. BLACKMAR. You do not include the roads to Baltimore and Newport News?

Mr. BLANCHARD. No; I am distinctly speaking of routes and points south of Newport News.

Mr. SHERMAN HOAR. When you said that all the roads to Boston were members of the Joint Traffic Association, that statement should be qualified by omitting the Boston and Albany Railroad, should it not?

Mr. BLANCHARD. I meant to say that the connecting lines west of the Hudson River, members of the association, include their New England business in our association and the tonnage reports. We have also received the cooperation of the New England lines in the association purposes I have recited.

Commissioner CLEMENTS. In speaking of the shipment of grain from the West you mentioned Chicago as a basing point coming through to the Atlantic ports. Is it not true, since the improving of the harbors at Galveston and Newport News and Norfolk, that much of the grain in the territory of Kansas and Nebraska that formerly came this way now takes the nearer and more direct way to these Gulf ports?

Mr. BLANCHARD. Yes; there is a larger proportion of grain going to the Gulf ports now than before those lines had their present improved facilities. Before then it went mainly through Chicago. St. Louis, Peoria, Cairo, etc.; but since the improvements at Galveston and New Orleans, the erection of elevators and the construction of warehouses, etc., there, they have taken considerable additional traffic to those points. I regard them as natural outlets for an important section of the national territory, and that they were entitled to share the competitive traffic tributary to their lines, as are Baltimore, Newport News, Norfolk, or Philadelphia as compared with New York.

Commissioner CLEMENTS. At the same rates traffic will ordinarily move by the shortest routes?

Mr. BLANCHARD. That depends. The shortest mail route may be to the Gulf, but the sea route and the total mileage may be longer. It may be the shortest route or mileage to the Gulf, but thence it may be the longest sea route to Liverpool and Bremen, etc. It does not follow that the traffic always traverses the shortest entire——

Commissioner CLEMENTS. Since the better development of these ports by elevators and shipping facilities—deeper water—in the manner you speak of, does not a great deal of grain come from northern Texas and Nebraska and Kansas there that formerly went to Chicago?

Mr. BLANCHARD. Yes.

Commissioner CLEMENTS. Did it not formerly go from northern Texas to the Atlantic ports?

Mr. BLANCHARD. Yes; some quantities of grain; but northern Texas used to send its supply mainly to the South, through the Memphis and Vicksburg gateways. They did not send much North. Some of it was milled at Kansas City, East St. Louis, etc.; but what was sent to the large consuming districts in the interior and East naturally came through the Chicago or other gateways of our lines, and continues to do so.

Commissioner CLEMENTS. How are the shipping facilities from the Gulf ports, with respect to the frequency of vessels going and obtaining tonnage for shipments from those ports, as compared with New York?

Mr. BLANCHARD. I can not answer. I have never seen the comparative lists of sailings: they are easily accessible, but they are less frequent than from New York and other Atlantic ports.

Commissioner CLEMENTS. Now, have not ocean rates diminished over former years, considerably diminished from both Galveston and New Orleans and diminished from Newport News and Norfolk?

Mr. BLANCHARD. Yes; from all those cities.

Commissioner CLEMENTS. And New York also?

Mr. BLANCHARD. Yes.

Commissioner CLEMENTS. And Boston?

Mr. BLANCHARD. Yes.

Commissioner CLEMENTS. And about in the same proportion?

Mr. BLANCHARD. I can not answer for the farther Southern ports—nothing south of Newport News or Norfolk—but the impression I have derived from current reports furnished by shipping agents is to the effect that the reductions of ocean rates have been greater from points south of New York than from New York and points north of it in recent years, say since the Cooley award of 1882.

Commissioner CLEMENTS. Are there more lines than there were formerly between those ports?

Mr. BLANCHARD. There has been an increase of lines from the Southern ports, and I think the sailings have been more increased from those ports, relatively, than from New York or Boston.

Commander CLEMENTS. Can you tell whether or not the terminal charges—the term here called "port charges"—incident to this harbor in shipping from New York have been increased or diminished since the period you alluded to—1886 and 1887?

Mr. BLANCHARD. I have no knowledge on that subject.

Commissioner CLEMENTS. You have not?

Mr. BLANCHARD. No; it does not come under our knowledge or possession.

Commissioner CLEMENTS. You said, if I understood you correctly (to illustrate), that the Big Four Railroad and the Chesapeake and Ohio could at any time, notwithstanding their membership in the Joint Traffic Association, reduce their rates. You meant to say by that, I suppose, that under the law they can do it if they choose to?

Mr. BLANCHARD. They can do it both under the common and statutory law and under their contract with the Joint Traffic Association.

Commissioner CLEMENTS. Do I understand you to say that they can be members of the agreement, or that association and parties to the agreement, and obey all its rules, and at the same time independently act for themselves without consulting the other members of the association, and reduce their tariff?

Mr. BLANCHARD. Yes; but I wish to draw a distinction between the rates of the association and its rules. By the terms of our contract, the board of managers make recommendations as to rates to the various companies comprising the association, but the clause in the contract to which I refer provides that if any company dissents from such recommendation it can, by action of its board of directors, duly notify the managers of their dissent therefrom, and thereafter publish other rates. Dissent naturally produces lower rates, because they would not dissent in order to make higher rates; but when it comes to the rules applicable to rates, such as classification, etc., charges at seaport points, rates to intermediate points, etc., such rules would remain in force and be applicable to any rates; but the rate-deciding power of the board of directors of each company was reserved by them in the contract.

Commissioner CLEMENTS. Now, suppose these two systems should want to reduce their rates to Norfolk to 15 cents, and being members of your association, and desiring to live up to their agreement in every way, what step would they first take?

Mr. BLANCHARD. They would dissent from the prior rate and give the notice provided in the clause of the contract to which I have referred. The contract provides that the managers shall then consider the steps necessary for the due protection of the other companies and localities.

Commissioner CLEMENTS. What steps are provided for by the other roads?

Mr. BLANCHARD. No steps are provided, except that should the tariff rate be reduced to Newport News by the Chesapeake and Ohio road to 15 cents, there is no reasonable doubt that the rates would be immediately reduced to Boston, New York, Philadelphia, and Montreal to correspond therewith, in order to preserve the agreed geographical relations and the interests of rival lines.

Commissioner CLEMENTS. Is not there some obligation on your part that precedes what notice they would give?

Mr. BLANCHARD. Yes; a moral obligation that they would come to us for the consideration of their reasons. The practice of the association is, that if any company dissents from a rate recommended by the managers, it would ask them to be heard

or be invited by them to state its reasons. If it adhered to its independent intent, its recourse is as provided in the agreement, and I have repeated it.

Commissioner PROUTY. If we take any action on this, of course we want to get at some basis on which that action should be based. Now, what do you say the purpose of these differentials is?

Mr. BLANCHARD. The eastward rate, Chicago to New York, for example, is the same by all like routes. The same principle should, in my judgment, apply as far as practicable from St. Louis to London, but some routes of unequal facility between domestic points have differentials. The purpose of the present and prior port differentials has been to make the rates from Western producing centers to important European centers substantially alike, all conditions having weight, not alone on current through bills of lading as to such traffic, but in the aggregates of the average rail and ocean charges so far as they can be reasonably approximated to fluctuating ocean conditions, the inland conditions being substantially uniform and permanent. These differentials must also have relation to import as well as export tonnage.

Commissioner PROUTY. Having Chicago as one point, representative of the Western points, and Liverpool as another point, representative of the foreign ports, the object of the differential is to make the rate from Chicago to Liverpool through all the ports the same?

Mr. BLANCHARD. The differential can not in all cases be based on Chicago or Liverpool, but must be the average of various starting points and numerous markets abroad, after taking into account all the due factors of rates, charges, and conditions. That being done, the object is as you state it.

Commissioner PROUTY. And if you accomplish that purpose, it is not any part of your purpose to see whether the proper amount of traffic goes one way or the other? All you aim to do is to keep the actual rate, the actual cost of that transportation, the same?

Mr. BLANCHARD. I think the proposal should be, that if the through freight rates are thus substantially equalized, the European buyers, American sellers, and all intermediate commission agents, etc., be left free to choose differential, consider the claims of New York, Boston, Baltimore, Philadelphia, or Norfolk; that has not anything to do with it so long as the rate through each port is the same.

Mr. BLANCHARD. Substantially, I believe that is a correct view.

Commissioner PROUTY. When was this present differential fixed?

Mr. BLANCHARD. The present differentials were agreed to by the lines to New York, Philadelphia, and Baltimore in April, 1877. On this point the memorandum then made was as follows:

"To avoid all future misunderstanding in respect to the geographical advantages or disadvantages of the cities of Baltimore, Philadelphia, and New York, as affected by rail and ocean transportation, and with the view of affecting an equalization of the aggregate cost of rail and ocean transportation between all competitive points in the West, Northwest, and Southwest, and all domestic or foreign ports reached through the above cities," etc.

The differentials then agreed to are those now under discussion, and were affirmed by Judge Cooley and Senators Washburn and Thurman. In their decision, July 20, 1882, they said:

"Differential rates have come into existence under the operation of competitive forces; they bear some relation to relative distance and relative cost of service; they recognize, as we think, the relative advantages of the several seaports, and they are subordinate to the great principle which compels the carriers of property competing between the same points and offering equal facilities to their customers to make the same rates."

Commissioner PROUTY. The testimony before us is that on cargo lots the ocean rates from the five ports are substantially the same. Is that your understanding of the matter?

Mr. BLANCHARD. We are now endeavoring to get accurate information on that point. The reports we have vary in that respect. Of course, the ocean rates are fixed more squarely upon grain, but with reference to other cargoes, such as provisions, tobacco, wool, cotton, etc., they are not, and ocean rates fluctuate weekly. All these questions have to be taken into account in order to establish proper average differentials as to the ports from which these varying ocean conditions prevail. As to the cargo question upon grain, I have stated that my information is to the effect that the reduction in the ocean rates from Southern ports has been more since 1877 and 1882 and since the passage of the interstate law than from the Northern ports, and that they more nearly approximate equality from all ports than they did in 1882 or 1887.

Commissioner PROUTY. The testimony before us tends to show that the cargo rates on grain from the five ports are identically the same, and if that were so and the grain was all carried abroad in cargo lots there ought to be no differentials at either place.

Mr. BLANCHARD. If all the other conditions and circumstances to which I have referred were alike, including harbor charges, terminal charges, foreign destinations, sailings, insurance, character of vessels, banking facilities, and so on, I think you have stated correctly the theory upon which differential inland rates have been and should be constructed to the various ports. The larger quantity of spot tonnage at New York brought coastwise, the lower rates upon grain especially during the season of canal navigation to New York, etc., are factors which must receive due consideration in determining reasonable differentials to points both north and south of New York. It will also challenge your consideration whether the Baltimore and Ohio and Chesapeake and Ohio companies shall charge as much to Baltimore and Newport News as for about 200 miles more to New York via their lines.

Commissioner PROUTY. Now, in point of fact, grain is sometimes carried abroad at berth rates and sometimes at cargo rates. I have here a table which shows that in 1882 there was a certain difference between the berth rates from New York and Philadelphia and Baltimore. That table shows that in 1896 that difference is substantially eliminated; it is about the same now. Now if, in point of fact, there has been a shrinkage in this difference, there ought to be a corresponding shrinkage in the differentials if everything else continues the same.

Mr. BLANCHARD. There ought to be an approximation to equal combined rates. I have endeavored to recite the theory of the application of inland rates and differentials to shipments abroad; that is, in the formation of through or aggregate rates. It matters less what the relative rates are for articles consumed at New York and Baltimore, but it matters greatly as to traffic exported.

Commissioner CLEMENTS. You have said, in answer to a question of Mr. Loomis, I believe, that the purpose of the maintenance of rates as expressed in the joint traffic agreements, and which is the object of your association, has reference to the maintenance of rates established and published under the law.

Mr. BLANCHARD. Yes; that is the amount of it.

Commissioner CLEMENTS. That is the purpose of it?

Mr. BLANCHARD. Yes; that is the purpose.

Commissioner CLEMENTS. Do we understand you by that to mean to say that one purpose of it is not to maintain the rates agreed on by the association, with its machinery for making rates, competitive rates to points on all the lines and that by the maintenance of the rate is meant the maintenance of the rate that the association makes or authorizes or agrees to?

Mr. BLANCHARD. I can perhaps state the purpose of the association more clearly than I have before. At Chicago, for example, there are ten east-bound railroads, all leading to New York, and several, but not all, to the other ports. Some conference as to making and maintaining like rates via all those routes to each destination is essential to commercial equity and fairness at that point and elsewhere, because Chicago affects a large number of other places. There is no difference in the effect on trade between ten rates on ten railroads and ten rates on one railroad so far as geographical or individual advantage or ruin are concerned.

Therefore an essential parity of rates must be determined by conference and agreement before rates are announced, and they must be also uniform in announcement and duration. To apply this illustration we have say three thousand commodity rates reducing class rates between the east and the west both ways. Applications, whether to eliminate any of such commodity rates before thought too low by us or which shippers thought too high, are brought before our board. There being independent associations east and west of Buffalo, Pittsburg, Wheeling, etc., the rates are under our rules referred by us to those respective associations to be laid before their constituent lines and to ask their ballots thereon, and they usually consult their shippers. These ballots are tabulated in our office and laid before our managers as the advice of the railroad companies to them in such respects. In some cases these recommendations are approved, in some they are not. When notices of our concurrence or dissent are issued they are in the forms of recommendations. By the terms of the law and of our contract, after any rate so considered is approved it is further necessary to have published and uniform tariffs, which are always issued by the carriers.

Thereafter the machinery of our association is used, so far as can legally be done, to maintain such carefully considered rates, provided all the constituent companies accept the views of the managers. Such rates are published and filed according to law by the companies affected, and not by us. We file no tariffs, but copies of the tariffs are, under our association agreement, filed in my office presumably at the same time as with this honorable board. The object of our association is thereafter to act as the strong right arm of your organization and to make the same efforts to maintain rates which you do. I think we do more to that end than you do. As to the great mass of these rival rates, of which there are now about 600,000 between 4,000 Western points and 7,000 Eastern destinations, and with all the complications resulting therefrom, we have adopted this general rule and usage.

Further, when the interstate act took effect the eastern-bound first-class freight rate, for example, from Chicago to New York was 75 cents, but west bound it was $1. Pursuant to our understanding of the purposes of that act, we reduced the west-bound freight rates to those east bound, although they applied on different classes of goods, more valuable westward. In other words, the units or pivotal rate points are New York in the East and Chicago in the West, these having been made the standards, with changes in the rates for traffics of exceptional character, such as dressed beef, grain, cotton, wool, live stock, meats, iron, and so on. We consider those articles exceptionally as trade reasons affect them, and rates thereon are from time to time changed, but the class rates are supposed to remain substantially as at the passage of the act and they have never been challenged by the public, unless in isolated cases.

As to applications touching rates and rules between these and other points, hearings have been granted before the Trunk Line Association, the Central Traffic Association, and our own whenever the carrying and commercial interests differed. Although they all seek reduced rates, we encourage such hearings. Then, as to Cincinnati and Indianapolis rates, for illustration, the basis being fixed on Chicago to New York, as stated, other rates are a greater or less percentage of Chicago rates according to varying distances, terminal expenses being also considered. Where the distance is more than from Chicago, rates are increased, as from St. Louis and Peoria. The Boston rates for exports are then made the same as to New York with certain differentials higher for local consumption at Boston. Philadelphia is made 2 cents less on grain, etc., and Baltimore 3 cents, and those differentials above or below New York are carried down through the interior of Illinois and other States, as at Peoria, Vincennes, Cairo, Cincinnati, Indianapolis, etc., thus giving the benefit of Chicago conditions to every interior point.

The Joint Traffic Association has rarely departed from that class rate basis, because it has been the result of the evolution of rates for forty-five years. It has produced reductions of rates on cotton within my experience from $5 per 100 pounds to 35 cents from East St. Louis to Boston; on flour, from $2.50 per barrel to 50 cents, and west bound on dry goods from New York to Chicago from $2.50 to 75 cents. The rate on cheese from Buffalo to New York has been reduced from $1.50 per 100 pounds to 28 cents. There must, however, be some points at which rate reductions must stop, and remain only reasonable, or less than reasonable, and where uniform rates and procedure are absolutely essential to all interests. Railroads must therefore meet and make these rates in the way I have recited or some other way, and were they not so determined and issued, there would be commercial and financial chaos and petitions to resort to our again as much as if custom rates differed. Shippers can not wait until their freight is sent to railway stations to know what the rates are. Admitting our rates to be reasonable, we have regarded it as due to the public under the common law and the law governing your honorable body and ourselves, as well as under our own organization, to do everything in our power to maintain those rates and prevent their unfair, unreasonable, and secret depletion or preferences. I use the word maintain in that sense only.

Commissioner CLEMENTS. Then, I do infer from all you have said that you do not wish to be understood as limiting the term or expression "maintenance of rates" as the purpose of your association, but simply to enforce the maintenance of rates that have been established under the interstate-commerce law?

Mr. BLANCHARD. If I have left any other impression with you I am glad to correct it.

Commissioner CLEMENTS. It includes the making of what your association believes to be right, so far as the rates are concerned, and an adherence to them after being made?

Mr. BLANCHARD. That is true; and there is one feature in the making of our rates requiring a further statement. We have, for example, a committee consisting of twenty-three officers of lines representing the largest steel-rail carriers in our section of the country. Commensurate with the reductions recently made in the price of steel rails, that committee have recommended and we have approved certain reduced rates for the transportation of the rails.

As to other articles of steel and iron manufacture, our classification calls for fourth class for small quantities and fifth class for carloads. Last week our association advised a reduction in that entire classification all over our territory until the end of navigation, amounting to one full class in all directions, with hundreds of thousands of dollars of depletion in our revenues. Having thus agreed upon various reduced rates as the result of such railroad and mercantile conferences and in recognition of the commercial conditions of the country, our association thereafter bends its efforts to the maintenance of such reduced rates as a legal and equitable duty, and as proper rewards for our services.

Commissioner CLEMENTS. What I want to know is whether we are to understand that you, in purpose as expressed of maintaining rates—whether that includes the

holding up of rates to a standard which you want to enforce, as well as the adherence to them after they are made and published.

Mr. BLANCHARD. That includes the revision of rates from time to time; but after their determination, in the manner I have recited, we insist upon their impartial maintenance.

Commissioner CLEMENTS. Do you not exercise any influence, through this association, to prevent any individual line reducing the rate below the points where the other lines would be willing to compete?

Mr. BLANCHARD. Yes; to the extent that we would ask for a conference and go over the matter.

Commissioner CLEMENTS. And the whole machinery is with a view of that, as well as for the purpose of maintaining the rates after they are published?

Mr. BLANCHARD. Yes. For example, our recent reductions on export corn, from 20 cents to 15 cents, was the result of conferences of that character.

Commissioner PROUTY. Do you think these remarkable reductions would have taken place if there had been a joint traffic association all the way through?

Mr. BLANCHARD. I do not think any association has any effect to make undue rates, but only to maintain the rates which commercial and competitive conditions compel.

Commissioner PROUTY. You think this is for the benefit of the merchants, then?

Mr. BLANCHARD. I think so. I never heard of any complaint from any merchant, and as our revenues are four times those of the Government, I think the maintenance of our legal and reasonable rates four times as important as to maintain uniform import and postage tariffs.

Mr. BOND. I would be glad if you would state the rate conditions in Nebraska and Kansas and the Southwestern corn belt during the last season as regards the rates of Gulf ports and Atlantic ports.

Mr. BLANCHARD. Can you be a little more explicit?

Mr. BOND. I mean what were the comparative rates for that district—just the rate?

Mr. BLANCHARD. Generally speaking, and not from any certain knowledge, I understand that practically the pivotal point is that the Illinois Central rate from East St. Louis to New Orleans is largely the basis used from points west thereof to Galveston. That is only hearsay, but from that starting point the rates farther west remain about that basis to the Gulf ports, but they increase more via St. Louis, Peoria, and Chicago, and our lines to eastern points and ports, as the distances lengthen. This makes it an extremely difficult geographical question to consider and adjust.

Commissioner CLEMENTS. What I wanted to get was the comparison between the operation of the Gulf rates in that territory and the Joint Traffic Association rates.

Mr. BLANCHARD. Their rates to the Gulf are much lower than ours to the Atlantic ports. Does that answer your question?

Commissioner CLEMENTS. I wanted to know what they were—the actual rates?

Mr. BLANCHARD. Assuming that the rate from a given point in Kansas to Galveston to-day is, say, 12 cents, and the rate from same point to East St. Louis is 7 cents per hundred, our rate east of East St. Louis would be 23 to New York on wheat, 23 plus 7 is 30 against, say 12 or 15 or more, as the case may be, to the Gulf. From the remoter western points their rates may be thus in some cases one-half as much to Galveston as to New York.

Commissioner KNAPP. If there is nothing further from Mr. Blanchard he will be excused.

We will now take recess until 2 o'clock.

EXHIBIT D.

ARTICLES OF ORGANIZATION OF THE JOINT TRAFFIC ASSOCIATION.

[Adopted November 19, 1895. To take effect January 1, 1896.]

PREAMBLE.

PURPOSES OF THIS AGREEMENT.

To aid in fulfilling the purposes of the interstate commerce act, to co-operate with each other and adjacent transportation associations, to establish and maintain reasonable and just rates, fares, rules and regulations on State and interstate traffic, to prevent unjust discrimination, and to secure the reduction and concentration of

agencies and the introduction of economies in the conduct of the freight and passenger service,

The Allegheny Valley Railway Company,
Baltimore and Ohio Railroad Company,
Baltimore and Ohio Southwestern Railway Company,
Central Railroad Company of New Jersey,
Chesapeake and Ohio Railway Company,
Chicago and Erie Railroad Company,
Chicago and Grand Trunk Railway Company,
Cleveland, Cincinnati, Chicago and St. Louis Railway Company,
Delaware, Lakawanna and Western Railroad Company,
Detroit, Grand Haven and Milwaukee Railway Company,
Erie Railroad Company,
Grand Rapids and Indiana Railroad Company,
Grand Trunk Railway Company of Canada,
Lake Shore and Michigan Southern Railway Company,
Lehigh Valley Railroad Company,
Michigan Central Railroad Company,
New York Central and Hudson River Railroad Company,
New York, Chicago and St. Louis Railroad Company,
New York, Ontario and Western Railway Company,
Northern Central Railway Company,
Pennsylvania Company,
Pennsylvania Railroad Company,
Philadelphia and Reading Railroad Company,
Philadelphia, Wilmington and Baltimore Railroad Company,
Pittsburgh and Lake Erie Railroad Company,
Pittsburgh and Western Railway Company,
Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company,
Terre Haute and Indianapolis Railroad Company (Vandalia Line),
Toledo, Peoria and Western Railway Company,
Wabash Railroad Company,
West Shore Railroad Company,

do hereby constitute the Joint Traffic Association (hereinafter called the association) and make this agreement for the purpose of carrying out the objects above named. Other companies may become members of the association as provided in Article Three.

ARTICLE ONE.

BOARDS OF ADMINISTRATION.

SECTION 1. The affairs of the association shall be administered by three boards, with duties as hereinafter specified:

(*a*) A board of control.

(*b*) A board of managers, hereinafter called the managers.

(*c*) A board of arbitration, hereinafter called the arbitrators.

SECTION 2. Wherever the term traffic is used herein it means both freight and passenger traffic.

ARTICLE TWO.

TRAFFIC SUBJECT TO THE ASSOCIATION.

SECTION 1. The association shall have jurisdiction over all competitive traffic (subject to the exceptions noted in section 2 of this article) which passes to, from, or through the western termini of the trunk lines, viz: Toronto, Can.; Suspension Bridge, Niagara Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction, Dunkirk, and Salamanca, N. Y.; Erie, Pittsburgh, and Allegheny, Pa.; Bellaire, O.; Wheeling, Parkersburg, Charleston, and Kenova, W. Va., and Ashland, Ky.; and such other points as may hereafter be designated by the managers as such termini; also all traffic which may pass through other junctions of the companies parties hereto which is included when passing through any of the termini or junctions above or hereafter specified, and such other traffic as may by common consent of the parties be hereafter included herein.

SECTION 2. The following shall not be included:

(*a*) Coal, coke, iron ore, mill cinder, limestone, and petroleum, crude or refined.

(*b*) Traffic destined to or coming from Florida, Georgia, North and South Carolina, Virginia, and West Virginia south of the south line of the Chesapeake and Ohio Railway.

ARTICLE THREE.

THE BOARD OF CONTROL.

SECTION 1. The presidents of the companies forming the association and of such other companies as may become parties hereto shall constitute the board of control, which shall meet on the written request of any three of its members.

SECTION 2. In case of the absence of any member of the board of control from a meeting the next ranking officer in such company having jurisdiction over traffic will have authority to act in his place and stead.

SECTION 3. Each member of the board of control shall be entitled to one vote, except that no system as designated in article four shall have more than three votes in the aggregate.

It shall require three-fourths of the entire number of authorized votes to adopt any proposition coming before the board of control.

SECTION 4. The board of control shall fix the salaries of any commissioners appointed by the managers.

The salaries of other officers and employees of the association shall be subject to its review and approval.

The board of control shall select the arbitrators and fix their compensation and term of service.

SECTION 5. The board of control shall appoint an auditing committee, who shall examine and report to it upon the accounts of the association.

SECTION 6. The board of control shall prescribe the conditions and rules under which additional railway systems or companies shall become parties hereto and be represented upon the board of managers.

SECTION 7. Only the board of control shall consider appeals from the action of the managers on all questions as to rates or fares, except differentials.

SECTION 8. Pending decisions by the board of control, the decisions and orders of the managers shall prevail.

ARTICLE FOUR.

THE BOARD OF MANAGERS.

SECTION 1. The board of managers shall consist of not less than nine members, of which each of the following nine systems shall designate one:

Baltimore and Ohio system, now comprising the Baltimore and Ohio Railroad line from Philadelphia to Parkersburg and from Philadelphia to Chicago via Wheeling and via Pittsburg and Connellsville; Baltimore and Ohio Southwestern; Cleveland Terminal and Valley, and the Pittsburg and Western Railroad companies, and all their leased, controlled, or operated lines.

Chesapeake and Ohio system, now comprising the Chesapeake and Ohio; Cleveland, Cincinnati, Chicago and St. Louis, and lines composing that system, and the Peoria and Eastern Railroad companies, and all their leased, controlled, or operated lines.

Erie system, now comprising the Erie Railroad Company; the Chicago and Erie Railroad Company, and all their leased, controlled, or operated lines.

Grand Trunk system, now comprising the Grand Trunk Railway Company of Canada and its affiliations west of the St. Clair River, viz., the Chicago and Grand Trunk; Cincinnati, Saginaw and Mackinaw; Detroit, Grand Haven and Milwaukee; Michigan Air Line, and the Toledo, Saginaw and Muskegon railway companies, and all their leased, controlled, or operated lines.

Lackawanna system, now comprising the Delaware, Lackawanna and Western Railroad Company and its leased lines; and the Syracuse, Binghamton and New York Railroad Company, and all their leased, controlled, or operated lines.

Lehigh Valley system, now comprising the Lehigh Valley Railroad Company and all its leased, controlled, or operated lines.

Pennsylvania system, now comprising the Allegheny Valley; Cumberland Valley; Cincinnati and Muskingum Valley; Grand Rapids and Indiana; Northern Central; Pennsylvania; Pennsylvania Company; Philadelphia, Wilmington and Baltimore; Pittsburgh, Cincinnati, Chicago and St. Louis, and the Terre Haute and Indianapolis (Vandalia Line) railroad companies, and all their leased, controlled, or operated lines.

Vanderbilt system, now comprising the Beech Creek; Canada Southern and its leased lines; Dunkirk, Allegheny Valley and Pittsburg; Lake Shore and Michigan Southern; Michigan Central and its leased lines; New York Central and Hudson River; New York, Chicago and St. Louis; Pittsburgh and

Lake Erie; Rome, Watertown and Ogdensburg; Walkill Valley and the West Shore railroad companies, and all their leased, controlled, or operated lines.

Wabash system, now comprising the Wabash Railroad Company and all its leased, controlled, or operated lines east of the Mississippi River.

SECTION 2. Additional managers representing other systems or companies which are now or may hereafter become parties to this agreement may be designated by such systems or companies under the authority and rules of the board of control.

SECTION 3. Each manager shall hold office during the continuance of this agreement, subject to the pleasure of, and shall be compensated by, the system appointing him.

ARTICLE FIVE.

RELATING TO THE DUTIES AND POWERS OF THE MANAGERS.

SECTION 1. The managers shall have their principal office in New York City, and shall continue in session subject to their rules. They shall elect a chairman annually.

SECTION 2. The managers shall adopt their rules and perfect their organization. It shall, however, require the affirmative votes of three-fourths of their entire number to adopt any proposition coming before them.

SECTION 3. In considering questions which exceptionally affect the interests of any company party hereto unrepresented upon the board of managers, such company shall be advised thereof and be afforded an opportunity under the rules of the managers for presenting to them its views before final action is taken.

SECTION 4. The managers shall construe this agreement and all resolutions adopted thereunder.

SECTION 5. All applications for differentials and for changes in rates, fares, charges, and rules shall be made to the managers. Their action upon differentials and upon all questions except as to rates and fares shall be subject to appeal, but only to the arbitrators. Their action as to rates and fares (except differentials) shall be subject to appeal only to the board of control.

Decisions and orders of the managers shall be complied with until such appeals are decided.

ARTICLE SIX.

APPOINTMENT OF COMMISSIONERS.

The managers may appoint not more than three commissioners, and shall define their powers and duties.

ARTICLE SEVEN.

RATES, FARES, CHARGES, AND RULES.

SECTION 1. The duly published schedules of rates, fares, and charges and the rules applicable thereto now in force and authorized by the companies parties hereto upon the traffic covered by this agreement (and filed with the Interstate Commerce Commission as to such of said traffic as is interstate) are hereby reaffirmed by the companies composing the association, and the companies parties hereto shall within ten days after this agreement becomes effective file with the managers copies of all such schedules of rates, fares, and charges and the rules applicable thereto.

SECTION 2. The managers shall from time to time recommend such changes in said rates, fares, charges, and rules as may be reasonable and just, and necessary for governing the traffic covered by this agreement and for protecting the interests of the parties hereto therein, and the failure to observe such recommendations by any party hereto as and when made shall be deemed a violation of this agreement. No company party hereto shall through any of its officers or agents deviate from or change the rates, fares, charges, or rules herein reaffirmed or so recommended by the managers, except by a resolution of its board. The action of such board shall not affect the rates, fares, charges, or rules disapproved except to the extent of its interest therein over its own road. A copy of the resolution of the board of any company party hereto authorizing any such change shall be immediately forwarded by the company making the same to the managers, and such change shall not become effective until thirty days after the receipt of such resolution by the managers. The managers, upon receiving such notice, shall act promptly upon the same for the protection of the parties hereto.

SECTION 3. The powers conferred upon the managers shall be so construed and

exercised as not to permit violation of the interstate-commerce act or any other law applicable to the premises, or any provision of the charters or the laws applicable to any of the companies parties hereto, and the managers shall cooperate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares, charges, and rules established hereunder.

ARTICLE EIGHT.

PROPORTIONS OF COMPETITIVE TRAFFIC.

The managers are charged with the duty of securing to each company party hereto equitable proportions of the competitive traffic covered by this agreement, so far as can be legally done.

ARTICLE NINE.

RELATIONS TO NONCONCURRING COMPANIES, AND DIVISIONS OF RATES AND FARES.

SECTION 1. The managers shall decide and enforce the course which shall be pursued with connecting companies not parties to this agreement, which fail or decline to observe the rates, fares, charges, and rules established under this agreement. The interests of companies parties hereto injuriously affected by such action of the managers shall, in such instances, be accorded reasonable protection in so far as the managers can legally do so.

SECTION 2. When in their judgment necessary to the purposes of this agreement, the managers may determine the divisions of rates and fares between connecting companies parties hereto and between them and connections not parties hereto, keeping in view uniformity and the equities involved.

ARTICLE TEN.

LIMITATION OF POWERS OF FREIGHT LINES.

It is recognized and agreed that economy in the operation of through cooperative and commission freight lines and the limitation or termination of many of their existing powers and functions are absolutely required, and the companies parties hereto will actively cooperate with the managers and so manage such lines as to accomplish such results.

ARTICLE ELEVEN.

MANAGERS MAY ORGANIZE JOINT AGENCIES.

The managers shall have authority to organize such joint freight and passenger agencies as they may deem desirable, provided that if such joint agencies are established they shall be so arranged as will give proper representation to each company party hereto.

ARTICLE TWELVE.

MANAGERS TO APPROVE CONTRACTING AGENCIES.

No soliciting or contracting passenger or freight agency shall be maintained directly or indirectly by any of the companies parties hereto or by any freight line in connection with the traffic covered by this agreement, except with the approval of the managers, and no person who is decided by the managers to be objectionable shall be employed or continued in such agency.

ARTICLE THIRTEEN.

MANAGERS TO DEFINE DUTIES OF CONTRACTING AGENTS.

SECTION 1. The managers shall define the authority and duties of all persons acting as contracting and soliciting freight and passenger agents in relation to the traffic covered hereby, and, with due regard to the relative interests involved, they may determine the number of such persons to be employed.

The parties hereto shall observe and enforce the orders of the managers from time to time issued in that behalf.

SECTION 2. Such contracting and soliciting agents as the managers appoint shall be carried upon the pay rolls of the association.

SECTION 3. The Grand Trunk Company may appoint soliciting agents to be located at such points in Canada as may be necessary to meet the competition of Canadian lines not parties hereto, but such persons shall in all respects be subject to the rules of the managers.

ARTICLE FOURTEEN.

COMPLAINTS AND INVESTIGATIONS THEREOF.

When, in the judgment of the managers their information or any complaint so warrants, the officials and employees of the companies parties hereto may be examined, and in such investigation any or all officials or employees may be notified to attend, and any or all matters affecting directly or indirectly the traffic herein covered may be considered.

ARTICLE FIFTEEN.

REPORTS AND DATA TO BE FURNISHED.

The companies parties hereto agree to furnish to the managers all reports, papers, and information relating to the traffic covered hereby which may be requested by them.

ARTICLE SIXTEEN.

FORFEITURES FOR VIOLATIONS OF AGREEMENT.

For any action by any party hereto which, in the judgment of the managers, constitutes a violation of this agreement, the offending company shall forfeit to the association a sum to be determined by the managers, not exceeding five thousand dollars; but where the gross receipts of the transaction in which this agreement is violated shall exceed five thousand dollars, the offending party shall, at the discretion of the managers, forfeit a sum not exceeding such gross receipts. Such forfeitures shall be applied to the payment of the expenses of the association, except that the offending company shall not participate in such application of its own forfeiture.

ARTICLE SEVENTEEN.

DEPOSITS, EXPENSE FUND, AND PROVISION FOR FORFEITURES.

SECTION 1. Upon the call of the managers, after this agreement becomes effective, each company party hereto shall deposit with them the sum of five thousand dollars, and in addition thereto, upon their like call, such further sums monthly, based upon the gross earnings of each company party hereto from the traffic covered hereby, as the managers may decide to be necessary to defray the expenses of the association, including the salaries of the commissioners and arbitrators, and to provide for such forfeitures as may be adjudged.

SECTION 2. Any forfeiture made by any company party hereto, under the rules, shall be taken from the sums contributed by such company and charged in whole to its account. If its deposit at the time, exclusive of its said original contribution of five thousand dollars, shall be insufficient, it shall pay to the managers such deficiency within fifteen days after the forfeiture is finally adjudged.

SECTION 3. The balance of said deposits remaining at the expiration of this agreement shall be divided between the companies then parties hereto in the ratio in which they have contributed, less the amounts forfeited.

ARTICLE EIGHTEEN.

RETIREMENT FROM THE AGREEMENT.

Any party retiring from this agreement before the final completion of the time herein fixed, except by unanimous consent of the parties hereto, shall not be entitled to any refund from the residue of deposits remaining at the close of this agreement, but if any company fails to observe and be governed by this agreement, which fact shall be determined by the arbitrators, and then fails to pay its forfeitures within fifteen days after such decision of the arbitrators, then any other company may withdraw from this agreement upon giving thirty days' written notice to the managers, and such company so withdrawing shall be entitled to the residue of the funds it has contributed.

ARTICLE NINETEEN.

BOARD OF ARBITRATION.

SECTION 1. There shall be a permanent board of arbitration consisting of three disinterested persons, to which appeals shall be made as to all questions, including differentials arising under this agreement, except the determination of rates and fares.

SECTION 2. All differences between the parties hereto as to any lawful measure necessary to carry out the objects of the association, except as to rates and fares, shall be submitted to and be finally decided by the arbitrators.

SECTION 3. Pending decisions of the arbitrators the decisions and orders of the board of control and managers shall prevail.

SECTION 4. Hearings shall be had upon all questions arbitrated, under the rules established by the arbitrators and approved by the board of control, and the decision of the arbitrators or of any two of them shall be final.

ARTICLE TWENTY.

AMENDMENTS.

Amendments to this agreement shall only be made by the unanimous vote of the parties hereto.

ARTICLE TWENTY-ONE.

WHEN AGREEMENT BECOMES EFFECTIVE, AND ITS DURATION.

SECTION 1. This agreement shall not be effective until it shall have been approved by the boards of directors of the several companies parties hereto. Certified copies of resolutions giving such approval shall be filed with the managers.

SECTION 2. This agreement shall take effect January 1st, 1896, and shall continue in existence for five years thereafter. After said period, any company may retire therefrom upon giving ninety days' written notice of its desire to do so.

The Philadelphia and Reading Railroad Company being legally incapacitated from signing this contract at present, but having so far as it can do so indicated through its president and receivers and proposed reorganization committee its desire to act in harmony therewith and observe its terms, it is understood that the parties hereto will waive the signature of that company until it is reorganized and be bound by this agreement only so long as that company observes its conditions, which fact shall be determined by the arbitrators provided herein.

In witness whereof the corporations parties hereto have caused the foregoing agreement to be signed by their respective presidents and the seal of their respective corporations to be attached hereto.

ALLEGHENY VALLEY RAILWAY COMPANY,
[L. S.] W. H. BARNES, *President.*
THE BALTIMORE AND OHIO RAILROAD COMPANY,
[L. S.] By CHAS. F. MAYER, *President.*
Attest,
ANDREW ANDERSON, *Secretary.*
THE BALTIMORE AND OHIO SOUTHWESTERN RAILWAY COMPANY,
[L. S.] By EDWARD R. BACON, *its President.*
Attest,
EDWARD BRUCE, *Secretary.*
CENTRAL RAILROAD CO. OF NEW JERSEY.
[L. S.] J. R. MAXWELL, *President.*
Attest,
SAM'L KNOX, *Secretary.*
CHESAPEAKE AND OHIO RAILWAY CO.,
[L. S.] By M. E. INGALLS, *President.*
THE CHICAGO AND ERIE RAILROAD COMPANY,
[L. S.] By J. G. MCCULLOUGH, *President.*
THE CHICAGO AND GRAND TRUNK RY. CO.,
[L. S.] By L. J. SEARGEANT, *its President.*
THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RY. CO.,
[L. S.] By M. E. INGALLS, *President.*
THE PEORIA AND EASTERN RY. CO.,
[L. S.] By M. E. INGALLS, *President.*

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
[L. S.] By SAM. SLOAN, *President.*
Attest,
FRED. F. CHAMBERS, *Secretary.*

THE DETROIT, GRAND HAVEN AND MILWAUKEE RY. COMPANY,
[L. S.] By L. J. SEARGEANT, *its President.*

ERIE RAILROAD CO.,
[L. S.] E. B. THOMAS, *President.*

THE GRAND RAPIDS AND INDIANA RAILROAD COMPANY,
[L. S.] By J. H. P. HUGHART, *Second Vice-President.*
Attest:
R. R. METHEANY, *Secretary.*

THE GRAND TRUNK RAILWAY COMPANY OF CANADA,
[L. S.] By L. J. SEARGEANT, *its General Manager.*

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,
[L. S.] By D. W. CALDWELL, *President.*
Attest:
N. BARTLETT, *Ass't Secretary.*

LEHIGH VALLEY R. R. CO.,
[L. S.] E. P. WILBUR, *President.*
Attest:
JNO. R. FANSHAWE, *Secretary.*

THE MICHIGAN CENTRAL RAILROAD COMPANY,
[L. S.] By H. B. LEDYARD, *President.*
Attest:
E. D. WORCESTER, *Secretary.*

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
[L. S.] By CHAUNCEY M. DEPEW, *President.*
Attest:
E. D. WORCESTER, *Secretary.*

THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD CO.
[L. S.] By S. R. CALLAWAY, *its President.*
Attest:
ALLYN COX, *Secretary.*

NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY,
[L. S.] By T. P. FOWLER, *President.*
Attest:
R. D. RICKARD, *Secretary.*

THE NORTHERN CENTRAL RAILWAY COMPANY,
[L. S.] By G. B. ROBERTS, *President.*
Attest:
STEPHEN W. WHITE, *Secretary.*

PENNSYLVANIA COMPANY,
[L. S.] By G. B. ROBERTS, *President.*
Attest:
S. B. LIGGETT, *Secretary.*

THE PENNSYLVANIA RAILROAD COMPANY,
[L. S.] By G. B. ROBERTS, *President.*
Attest:
J. C. SIMS, *Secretary.*

THE PHILADELPHIA & READING RAILROAD COMPANY,
By action of its receivers and board of managers pursuant to the last clause of this agreement, and duly filed. (See attached copy.—F. H. H.)

THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAILROAD COMPANY,
[L. S.] By G. B. ROBERTS, *President.*
Attest:
D. S. NEWHALL, *Assistant Secretary.*

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,
[L. S.] By D. W. CALDWELL, *President.*
Attest,
JOHN G. ROBINSON, *Secretary.*

THE PITTSBURGH AND WESTERN RAILWAY COMPANY,
[L. S.] By THOS. M. KING, *President.*
Attest,
T. J. CRUMP, *Secretary.*

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY CO.,
By G. B. ROBERTS, *President.*

[L. S.]
Attest,
S. B. LIGGETT, *Secretary.*

TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY,
By W. R. MCKEEN, *President.*

[L. S.]
Attest,
GEO. E. FARRINGTON, *Secretary.*

THE TOLEDO, PEORIA AND WESTERN RAILWAY COMPANY,
By E. T. LEONDARD, *President.*

[L. S.]
Attest:
E. D. USNER, *Secretary.*

[L. S.]
THE WABASH RAILROAD CO.,
By O. D. ASHLEY, *President.*

Attest:
J. C. OTTESON, *Secretary.*

[L. S.]
THE WEST SHORE RAILROAD COMPANY,
By CHAUNCEY M. DEPEW, *President.*

Attest:
E. V. W. ROSSITTER, *Secretary.*

A true copy of the original on file in the office of the Joint Traffic Association, 143 Liberty st., New York City.

FRANK H. HOYT, *Secretary.*

Sworn to before me this 23rd day of Dec., 1895.

JAS. H. REILLY,
Notary Public, N. Y. Co.

"The receivers of the Philadelphia and Reading Railroad Company, having duly considered the articles of organization of the Joint Traffic Association, now under discussion by the companies constituting the Trunk Line and Central Traffic Association, approve the spirit and purpose thereof, and authorize Mr. Joseph S. Harris to express on our behalf our willingness to be governed by the terms thereof in the conduct of the competitive traffic to be transmitted over the lines of railroad under our charge, so far as he may be advised by counsel that the same may be lawfully done. Also, to agree in our behalf to contribute towards the expenses of the maintenance of the Joint Traffic Association such amounts as shall not exceed the rate of contribution hitherto made by us for the maintenance of the Trunk Line Association."

I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the receivers of the Philadelphia and Reading Railroad Company, held October 28, 1895.

(Signed)
W. R. TAYLOR,
Secretary to the Receivers.

"Mr. Harris stated to the receivers the substance of the conference held yesterday in New York with the representatives of the companies who are about to form the Joint Traffic Association, and read the modification of the second section of the fifth article which had been agreed upon entitling this company to a hearing before any action by the managers should become effective in cases exceptionally affecting the interests of the Reading Company. After full consideration Mr. Harris's action was approved, and he was authorized to state that the conduct of the competitive traffic to be transmitted over the lines of the Reading Railroad Company shall be governed by the terms of the proposed agreement so far as he may be advised by counsel that the same may be lawfully done."

I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the receivers of the Philadelphia and Reading Railroad Company, held November 20, 1895.

(Signed)
W. R. TAYLOR,
Secretary to the Receivers.

"The president reported that after the passage of the resolutions of the board at their meeting of October 29th, at a meeting of the committee in charge of the preparation of the articles of organization of the Joint Traffic Association, and afterwards at the meeting of the presidents of the Trunk Line Association and the Central Traffic Association, on November 19th, he had carefully stated the action which the company and the receivers were prepared to take in relation to the Joint Traffic Association. After considerable discussion of the proposed exceptional relations of

the Reading Railroad Company to the Joint Traffic Association, the president's meeting agreed that the Reading's position should be recognized, and the action authorized by the receivers and the company should be taken as a sufficient indication of their purpose to act in harmony with the other transporting companies. A number of verbal alterations, mostly made for the purpose of bringing the organization more thoroughly into harmony with the existing laws, but none of them involving changes of importance, had been made in the articles of organization since it was last presented to this board. The president had urged upon the meeting that some provision should be made to better care for the interests of companies unrepresented in the board of managers, in regard to questions exceptionally affecting their interests which should come before that board, and had obtained the insertion of section three, article six, which gives to such companies the right to be heard before the board of managers on questions which exceptionally affect their interests.

The president laid the articles of organization, as finally adopted at the meeting of November 19th, before the board, and stated in detail the main features of the articles, whereupon it was, upon motion,

Resolved, That the board approves of the spirit and purpose of the Joint Traffic Association as expressed in the formal contract now presented, and requests the receivers to act in harmony with the provisions of the agreement dated November 19, 1895, constituting that association, so far as they may be advised by counsel that the same may be lawfully done.

I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the board of managers of the Philadelphia and Reading Railroad Company, held December 11, 1895.

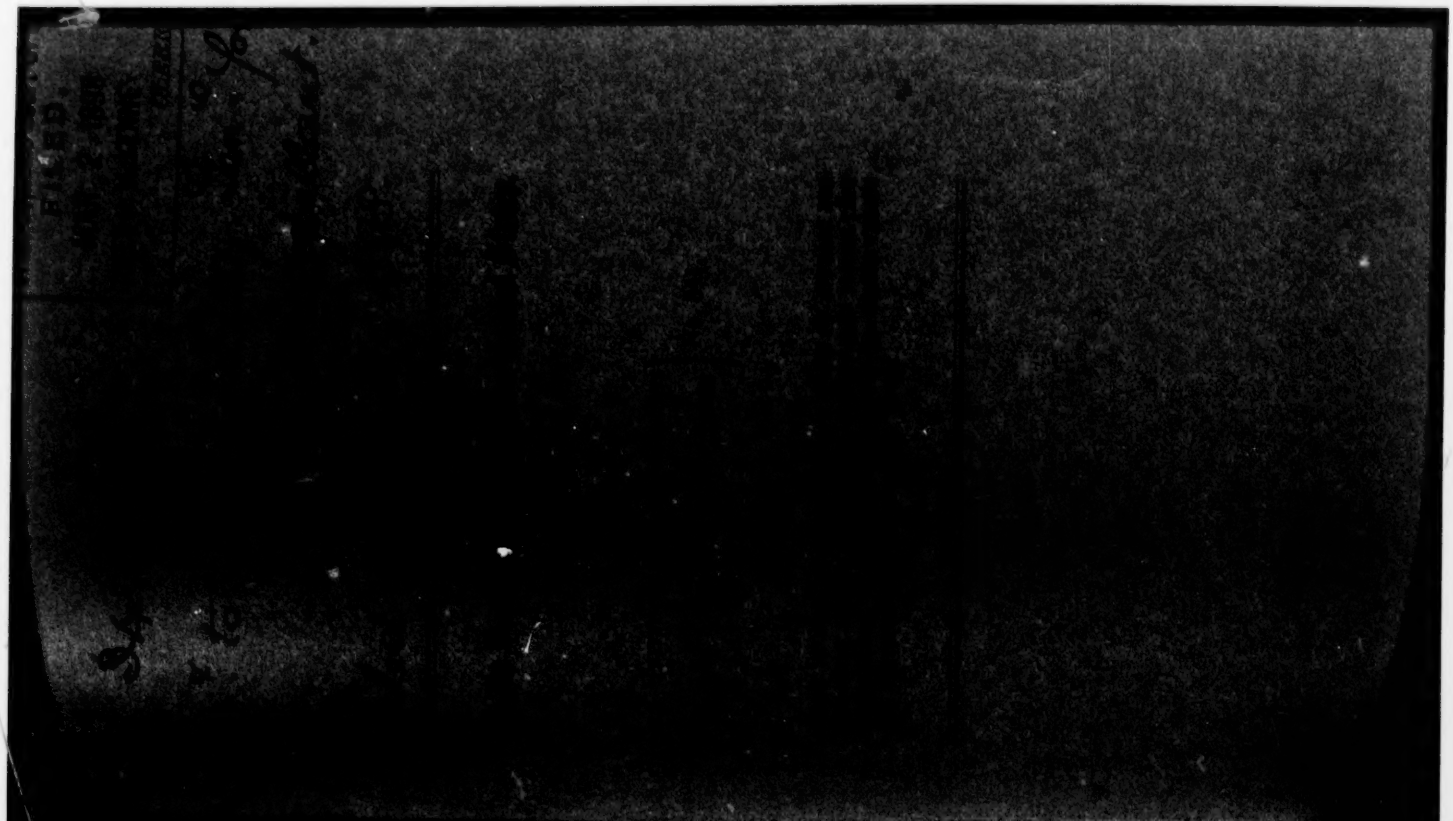
[SEAL.] (Signed) W. R. TAYLOR, *Secretary.*

A true copy of the original on file in the office of the Joint Traffic Association, 143 Liberty street, New York City.

F. H. HOYT, *Secretary.*

Sworn to before me this 23 day Dec., 1895.
[SEAL.]

JAS. H. REILLY,
Notary Public, N. Y. Co.



In the United States Circuit Court of Appeals.

SIXTH CIRCUIT.

THE UNITED STATES OF AMERICA *v.* THE ADDYSTON PIPE AND STEEL COMPANY, Dennis Long & Co., Howard-Harrison Iron Company, Anniston Pipe and Foundry Company, South Pittsburg Pipe Works, and Chattanooga Foundry and Pipe Works.	No. 498.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

SUBMITTED MAY 27, 1897. DECIDED FEBRUARY 8, 1898.

Before HARLAN, Circuit Justice, and TAFT and LURTON, Circuit Judges.

This was a proceeding in equity begun by petition filed by the attorney-general on behalf of the United States against six corporations engaged in the manufacture of cast iron pipe, charging them with a combination

and conspiracy in unlawful restraint of interstate commerce in such pipe in violation of the so-called anti-trust law passed by Congress, July 2, 1890. The defendants were the Addyston Pipe & Steel Company, of Cincinnati, Ohio; Dennis Long & Co., of Louisville, Kentucky; the Howard-Harrison Iron Company, of Bessemer, Alabama; the Anniston Pipe & Foundry Company, of Anniston, Alabama; the South Pittsburg Pipe Works, of South Pittsburg, Tennessee, and the Chattanooga Foundry & Pipe Works, of Chattanooga, Tennessee.

The petition prayed that all pipe sold and transported from one state to another, under the combination and conspiracy described herein, be forfeited to the petitioner and be seized and confiscated in the manner provided by law, and that a decree be entered dissolving the unlawful conspiracy of defendants and perpetually enjoining them from operating under the same and from selling said cast iron pipe in accordance therewith to be transported from one state into another.

The defendants filed a joint and separate demurrer to the petition in so far as it prayed for the confiscation of goods in transit, on the ground that such proceedings under the anti-trust act are not to be had in a court of equity, but in a court of law. In addition to the demurrer, the defendants filed a joint and separate answer, in which they admitted the existence of an association between them for the purpose of avoiding the great losses they would otherwise sustain, due to ruinous competition between defendants, but denied that their association was in restraint of trade, state or interstate, or

that it was organized to create a monopoly and denied it was a violation of the anti-trust act of Congress.

Testimony in the form of affidavits was submitted by petitioner and defendants and by stipulation it was agreed that the final hearing might be had thereon. Judge Clark, who presided in the circuit court, dismissed the petition on the merits. His opinion is reported in the 78 Fed. Rep. 712.

From the minutes of the association a copy of which was put in evidence by the petitioner, it appeared that prior to December 28, 1894, the Anniston Company, the Howard Harrison Company, the Chattanooga Company and the South Pittsburg Company had been associated as the Southern Associated Pipe Works. Upon that date the Addyston Company and Dennis Long & Co. were admitted to membership and the following plan was then adopted:

"First. The bonuses on the first 90,000 tons of pipe secured in any territory, 16" and smaller, shall be divided equally among six shops.

"Second. The bonuses on the next 75,000 tons, 30" and smaller, sixes to be divided among five shops, South Pittsburg not participating.

"Third. The bonuses on the next 40,000 tons, 36" and smaller, sizes to be divided among four shops, Anniston and South Pittsburg not participating.

"Fourth. The bonuses on the next 15,000 tons, consisting of all sizes of pipe, shall be divided among three shops, Chattanooga, South Pittsburg and Anniston not participating.

"The above division is based on the following tonnage of capacity:

South Pittsburg	15,000 tons
Anniston	30,000 tons
Chattanooga	40,000 tons
Bessemer	45,000 tons
Louisville	45,000 tons
Cincinnati	45,000 tons

"When the 220,000 tons have been made and shipped and the bonuses divided as hereafter provided, the auditor shall set aside into a reserve fund all bonuses arising from the excess of shipments over 220,000 tons and shall divide the same at the end of the year among the respective companies according to the percentage of the excess of tonnage they may have shipped (of the sizes made by them) either in pay or free territory. It is also the intention of this proposition that the bonuses on all pipe larger than 36 inches in diameter shall be divided equally between the Addyston Pipe & Steel Company, Dennis Long & Co., and the Howard Harrison Company."

"It was thereupon resolved:

"First. That this agreement shall last for two years from the date of the signing of same, until December 31, 1896.

"Second. On any question coming before the association requiring a vote, it shall take five affirmative votes thereon to carry said question, each member of this association being entitled to but one vote.

"Third. The Addyston Pipe & Steel Company shall handle the business of the Gas and Water Companies of Cincinnati, Ohio, Covington and Newport, Ky., and pay the bonus hereafter mentioned, and the balance of the

parties to this agreement shall bid on such work such reasonable prices as they shall dictate.

"Fourth. Dennis Long & Company, of Louisville, Ky., shall handle Louisville, Ky., Jeffersonville, Ind., and New Albany, Ind., furnishing all the pipe for Gas and Water Works in above named cities.

"Fifth. The Anniston Pipe & Foundry Company shall handle Anniston, Ala., and Atlanta, Ga., furnishing all pipe for Gas and Water Companies in above named cities.

"Sixth. The Chattanooga Foundry & Pipe Works shall handle Chattanooga, Tenn., and New Orleans, La., furnishing all gas and water pipe in the above named cities.

"Seventh. The Howard-Harrison Iron Company shall handle Bessemer and Birmingham, Ala., and St. Louis, Mo., furnishing all pipe for Gas and Water Companies in the above named cities; extra bonus to be put on East St. Louis and Madison, Ill., so as to protect the prices named for St. Louis, Mo.

"Eighth. South Pittsburg Pipe Works shall handle Omaha, Neb., on all sizes required by that city during the year of 1895, conferring with the other companies and co-operating with them; thereafter they shall handle the gas and water companies of Omaha, Neb., on such sizes as they make.

"Note.—It is understood that all the shops who are members of this association shall handle the business of the gas and water companies of the cities set apart for them, including all sizes of pipe made by them.

"The following bonuses were adopted for the different states as named below: All railroad or culvert pipe or

pipe for any drainage or sewerage purposes on 12" and larger sizes shipped into bonus territory shall pay a bonus of $1.00 per ton. On all sizes below 12" and shipped into 'bonus territory' for the purposes above named, there shall be a bonus of $2.00 per ton.

List of Bonuses.

Alabama	$3 00	Idaho	$2 00
B'gham, Ala	2 00	Nev	3 00
Anniston, Ala	2 00	Oklahoma	3 00
Mobile, Ala	1 00	Wis	2 00
Arizona Ter	3 00	Texas, Interior	3 00
California	1 00	Texas Coast	1 00
Colorado	2 00	Wash'ton Ter	1 00
Ind. Ter	3 00	Michigan	1 50
North C	1 00	West Va	1 00
Tenn., East of C'Land	2 00	Kansas	2 00
Tenn. Middle and West	3 00	Ky	2 00
Illinois, except Madison and East St. Louis, as previously provided	2 00	La	3 00
		Miss	4 00
		Mo	2 00
Wyoming	4 00	Montana	3 00
Oregon	1 00	Nebraska	3 00
Ohio	1 50	N. Mex	3 00
N. D	2 00	S. C	1 00
S. D	2 00	Minn	2 00
Florida	1 00	Utah	4 00
Georgia	2 00	Indiana	2 00
Atlanta, Ga	2 00	Iowa	2 00
Ga. Coast Pts	1 00		

"All other territory free.

"On motion of Mr. Llewellyn, the bonuses on all city work as specially reserved shall be $2.00 per ton."

The states for sales in which bonuses had to be paid into the association were called "pay" territory as distinguished from "free" territory in which defendants

were at liberty to make sales without restriction and without paying any bonus.

The by-laws provided for an auditor of the association whose duty it was to keep account of the business done by each shop both in pay and free territory. On the 1st and 16th of each month, he was required to send to each shop "a statement of all shipments reported in the previous half month, with a balance sheet showing the total amount of the premiums on shipments, the division of the same and debit credit balance of each company."

The system of bonuses as a means of restricting competition and maintaining prices was not successful. A change was therefore made by which prices were to be fixed for each contract by the association and except in reserved cities, the bidder was determined by competitive bidding of the members, the one agreeing to give the highest bonus for division among the others getting the contract. The plan was embodied in a resolution passed May 27, 1895 in the words following:

"Whereas, the system now in operation in this association of having a fixed bonus on the several states, has not in its operation resulted *in the advancement in the prices of pipe as was anticipated, except in reserved cities*, and some further action is imperatively necessary in order to accomplish the ends for which this association was formed. Therefore, be it resolved, that from and after the first day of June, that all competition on the pipe lettings shall take place among the various pipe shops prior to the said letting. To accomplish this purpose it is proposed that the six competitive shops have a representative board located at some central city to whom all

inquiries for pipe shall be referred, and said board shall fix the price at which said pipe shall be sold, and bids taken from the respective shops for the privilege of handling the order, and the party securing the order shall have the protection of all the other shops."

In pursuance of the new plan it was further agreed "that all parties to this association having quotations out shall notify their customers that the same will be withdrawn by June 1, 1895, if not previously accepted and upon all business accepted on and after June 1st, bonuses shall be fixed by the committee."

At the meeting of December 19, 1895, it was moved and carried, that upon all inquiries for prices from "reserved cities" for pipe required during the year of 1896, prices and bonuses should be fixed at a regular or called meeting of the principals.

At the meeting of December 20, 1895, the plan for division of bonuses originally adopted, was modified by making the basis the total amounts shipped into "pay" territory rather than the totals shipped into "pay" and "free" territory.

To illustrate the mode of doing business the following excerpt from the minutes of the meetings of December 20, 1895, February 14, 1896, and March 13, 1896, is given.

"It was moved to sell the 519 pieces of 20" pipe from Omaha, Neb., for $23.40, delivered. Carried. It was moved that Anniston participate in the bonus and the job be sold over the table. Carried. Pursuant to the motion, the 519 pieces of 20" pipe for Omaha was sold to Bessemer at a premium of $8."

"Moved that 'bonus' on Anniston's Atlanta Water Works contract be fixed at $7.10, provided freight is $1.60 a ton. Carried."

An illustration of the manner in which "reserved" cities were dealt with may be seen in the case of a public letting at St. Louis. On February 4, 1896, the water department of that city let bids for 2,800 tons of pipe. St. Louis was "reserved" to the Howard-Harrison Company, of Bessemer, Ala. The price was fixed by the association at $24 a ton, and the bonus at $6.50. Before the letting the vice-president of this company wrote to the other members of the association under date of January 24, 1896, as follows:

"I write to say that in view of the fact that I do not as yet know what the drayage will be on this pipe. I prefer that if any of you find it necessary to put in a bid without going to St. Louis, please bid not less than $27 for the pipe, and 2 3-4 cents per pound for the specials. I would also like to know as to which of you would find it convenient to have a representative at the letting. It will be necessary to have two outside bidders."

The contract was let to the Howard-Harrison Company, of Bessemer, at $24, who allowed the Shickle, Harrison & Howard Company, a pipe company of St. Louis, not in the association, but having the same president as the Howard-Harrison Company, of Bessemer, to fill part of the order. The only other bidders were the Addyston Pipe & Steel Company, and Dennis Long & Co., the former bidding $24.37, and the latter $24.57. The evidence shows that the Chattanooga Foundry could have furnished this pipe, delivered in St. Louis, at from

$17 to $18 and could have made a profit on it at that price. The record is full of instances of a similar kind, in which, after the successful bidder had been fixed by the "auction pool" or had been fixed by the arrangement as to "reserve" cities, the other defendants put in bids at the public letting as high as the selected bidder requested, in order to give the appearance of active competition between defendants.

In January, 1896, after the auction pool had been in operation for more than six months, the Chattanooga Company wrote a letter to its representative in the central committee to outline its policy for the new year, and the statements of the letter cast much light on the prices bid and the character of bonuses fixed. The letter is dated January 2, 1896, and is as follows:

"Dear Sir:—Referring to our policy for 1896, in bidding on pipe, we have had this matter under consideration for some time past, and from the information obtained from Mr. Thornton's statement as to the amount of business done last year in Pay Territory and from estimates that we have made for business, that will come into that territory for 1896, we have been able to determine to what point we could bid on work and take contracts, and if bonus is forced above this point, let it go and take the bonus. We note from your letter of yesterday that you have sized up the situation in its essential points, and it agrees exactly with our ideas on the subject. It is useless to argue that Howard-Harrison Iron Co., Cincinnati, and other shops, who have been bidding bonuses of $6 or $8 per ton, can come out and make any money if they continue to bid such bonus. In

the case of the Howard-Harrison Iron Co., people on Jacksonville, Fla. The truth of the business is they are losing money at the prices they bid for this work. If they take the contract at $19 delivered, it will only net $16 at the shop after they have paid back the bonus of $4.75; if they should continue to buy all the pipe that goes up to such figures as they have paid for Jacksonville and other points, they would wreck their shop in a few months. However, they of course calculate this bonus will be returned to them on work taken by other shops. We are very much pleased with the bonus that has been paid and we only hope they will keep it up as it is only money in our pockets. As long as there is no money to us let them make the pipe, as we shall continue to do so.

"For the present you will adopt the following basis:

"On 16" and under Standard weights, $14.25 at shop.

"On 18" and 36" Standard weights, $13.

"On 16" and under light weights $14.50 to $14.75 at shop.

"That is you will bid all over $13, $14.25 and $14.50 on work. If we get work at these prices it will be satisfactory. If the others run bonus above this point, let them take it as it will be more money to us to take the bonus.

"We note Mr. Thornton's report of average premiums from June 1st, to December, that the average was $3.63. The average bonuses that are prevailing to-day are $7 to $8. We can not expect this to continue and we think your estimate of $6 ton average bonus is high—as we do not believe the premiums for '96 will average that price,

unless there is a decided change for the better in business. We find there was sold and shipped into Pay Territory from January 1, 1895, to date, including the 40,000 tons of old business that did not pay a bonus, about 188,000 tons, and we think a very conservative estimate of shipments into this territory will amount to fully 200,000 this year; more than that, probably overrun 240,000 tons from the fact that the city of Chicago and several other places that annually use large quantities of pipe were not in the market last year, or last season, from the fact that they were out of funds. On the basis as given you above, if the demand should reach 220,000 tons, which would give us our entire 40,000 tons, provided we did no business, then the association would pay us the average 'bonus' which might be from $3.50 to $5 on our 40,000. If we can not secure business in 'Pay Territory' at paying prices, we think we will be able to dispose of our output in 'Free Territory,' and of course make some profit on that.

"At the prices that Howard-Harrison people paid for Jacksonville, Des Plaines and one or two other points, they are losing from $2.50 to $3 per ton, that is, provided 'bonuses' would not be returned to them. Therefore when business goes at a loss, we are willing that other shops make it."

Another letter written by the same company pending a trouble over a letting at Atlanta is significant. The Anniston Company to whom Atlanta had been "reserved" made its bid so high ($24) that a Philadelphia pipe firm, R. D. Wood & Co., had been able to underbid the Anniston Company in spite of difference in

freights. All the bids had been rejected as too high and upon a second letting, Anniston's bid was $1.25 a ton less and the job was awarded to it. The charge was then made by Atlanta persons that there was a "trust" or "combine." This was vigorously denied. The letter of the Chattanooga Company evoked by this difficulty was dated February 25, 1896, and read as follows:

"Gentlemen:—We are in receipt of a carbon copy of your favor of the 24th instant to F. B. Nichols, V.-P., in reference to Atlanta, Ga. We certainly regret that the matter has assumed its present shape and that R. D. Wood & Company should make a lower bid by one dollar a ton than the Southern shops. You know we have always been opposed to special customers and 'Reserved Cities,' we do not think that it is the right principle and we believe if the present association continues, that all special customers and 'Reserved Cities' should be wiped out; there is no good reason why we should be allowed to handle New Orleans, you Atlanta, Howard-Harrison Iron Co., St. Louis, or South Pittsburg, Omaha. We are not in the business to award special privileges to any foundry and we believe that the result would be more benefit to all concerned, if all business was made competitive. It is hardly right, and we believe if you will think over the matter carefully, you will concede it, for us to be put into a position of being unable to make prices or furnish pipe for the city of Atlanta, when we have always heretofore had a large share of their trade. We can not explain our position to the Atlanta people and we consider it is detrimental to our business and think no combination should

have the power to force us into such a position. The same argument will apply with you as to New Orleans, St. Louis and other places.

"We think this matter should be considered seriously and some action taken that will result in re-establishing ourselves (I mean the four Southern shops), in the confidence of the Atlanta people. Wistar, R. D. Wood & Company's man has no doubt told them all about our association, or as much as he could guess, and has worked up a very bitter feeling against us. The very fact that you have been protected and have had all their business for the past two years is proof to them that such a 'Combination' exists, and they state that if they they find out positively that we are working together, they will never receive a bid from any one of us again. We can not afford to leave these people under that impression and something ought to be done that would disprove Mr. Wistar's statement to them. We believe that all business ought to be competitive. The fact that certain shops have certain cities 'reserved' is all based upon mere sentiment and no good reason exists why it should be so. We believe that, as a general thing, we have had our prices entirely too high and especially do we believe this has been the case as to prices in 'reserved cities.' The prices made at St. Louis and Atlanta are entirely out of all reason, and the result has been and always will be, when high prices are named, to create a bad feeling and an agitation against the 'Combination.' There is no reason why Atlanta, New Orleans, St. Louis or Omaha, should be made to pay higher prices for their pipe than other places near them who do not use any-

thing like the amount of pipe and whose trade is not as desirable for many other reasons. There is no sentiment existing with us in reference to Atlanta as we would as soon sell our pipe anywhere else, only as stated above, it is wrong in principle that we should be forced to give up Atlanta or any other point for no good reason that we know of."

It appears quite clearly from the prices at which the Chattanooga and the South Pittsburg Companies offered pipe in "free" territory that any price which would net them from $13 to $15 a ton at their foundries would give them a profit. Pipe was freely offered by the defendants in "free" territory more than five hundred miles from their foundries at less prices than their representative board fixed prices for jobs let in cities in "pay" territory nearer to defendants' foundries by three hundred miles or more.

The defendants adduced many affidavits of a formal type, chiefly from persons who had been buying pipe from defendants and other companies who testified in a general way that the prices at which the pipe had been offered by defendants all over the country had been reasonable, but in not one of the affidavits was any attempt made to give figures as to cost of production and freight and in not a single case were the specific instances shown by the evidence for the petitioner disputed.

The evidence as to the capacity of the defendants' mills is by no means satisfactory. The division of bonuses was based on an aggregate yearly output of 220,000 tons, but there are averments in the answer that indicate that this was not a statement of the actual limit

of capacity, but was only taken as a standard of restricted output upon which to calculate an equitable division of bonuses. Nowhere in the large mass of affidavits is there any statement of the *per diem* capacity of defendants' mills. Taking their aggregate capacity, however, as 220,000 tons, that of the other mills in the "pay" territory was 170,500 tons, and that of the mills in "free" territory was 348,000 tons, according to the affidavit of the chief officer of one of defendants. Of the non-association mills in the "pay" territory one was at Pueblo, Col., another was in the state penitentiary at Waco, Tex., and a third in Oregon. Their aggregate annual capacity was 45,500 tons. Another non-association mill was the Shickle, Howard-Harrison mill of St. Louis, Mo., with a capacity of 12,000 tons. John W. Harrison, who was president of this company, was also president of the Howard-Harrison mill of Bessemer, Ala., which was a member of the association, and it appears that an order taken by the Bessemer mill at St. Louis was partly filled by the St. Louis mill. The other mills in the "pay" territory were one at Columbus, Ohio, with an annual capacity of 30,000 tons, one at Cleveland, Ohio, of 60,000 tons, one at Newcomerstown, in Northeastern Ohio, of 8,000 tons, and one at Detroit, Mich, of 15,000 tons, and their aggregate annual capacity was 113,000 tons. In the "free" territory there was one mill in Eastern Virginia with an annual capacity of 16,000 tons, four mills in Eastern Pennsylvania with a capacity of 87,000 tons, three mills in New Jersey with a capacity of 210,000 tons, and two

mills in New York, one at Utica and another at Buffalo, with an aggregate capacity of 35,000 tons.

The evidence was scanty as to rates of freight upon iron pipes, but enough appeared to show that the advantage in freight rates which the defendants had over the large pipe foundries in New York, Eastern Pennsylvania and New Jersey in bidding on contracts to deliver pipe in nearly all of the "pay" territory varied from $2.00 to $6.00 a ton, according to the location.

The defendants filed the affidavits of their managing officers in which they stated generally that the object of their association was not to raise prices beyond what was reasonable, but only to prevent ruinous competition between defendants which would have carried prices far below a reasonable point; that the bonuses charged were not exorbitant profits and additions to a reasonable price, but they were deductions from a reasonable price in the nature of a penalty or burden intended to curb the natural disposition of each member to get all the business possible and more than his due proportion; that the prices fixed by the association were always reasonable and were always fixed as they must have been, with reference to the very active competition of other pipe manufacturers for every job; that the reason why they sold pipe at so much cheaper rates in the "free" territory, than in the "pay" territory, was because they were willing to sell at a loss to keep their mills going rather than to stop them; that the prices at a city like St. Louis in which the specifications were detailed and precise were

higher because pipe had to be made especially for the job and they could not use stock on hand.

The defendants devoted a good deal of evidence to showing that the stenographer who furnished copies of the minutes of the association and of the correspondence between the members had a pecuniary motive in thus betraying the confidence of his employers, but no evidence was offered by them to contradict any statements made by him or to impeach the accuracy of the copies he has produced. On one point alone was he contradicted and that was in his statement that the bonuses represented the increase over and above a reasonable price made possible by the combination of the defendants.

TAFT, Circuit Judge, after stating the case as above, delivered the opinion of the court.

The first section of the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," passed July 2, 1890, 26 Stat. 209, declares illegal "every contract, combination in the form of trust or otherwise or conspiracy in restraint of trade or commerce among the several states or with foreign nations." The second section makes it a misdemeanor for any person to monopolize or attempt to monopolize, or combine or conspire with others to monopolize, any part of the trade or commerce among the several states. The fourth section of the act gives the circuit courts of the United States jurisdiction to hear and determine proceedings in equity brought by the district attorneys of the United States under the direction of the attorney-general to restrain violations of the act.

Two questions are presented in this case for our decision. First, was the association of the defendants a contract, combination or conspiracy in restraint of trade as the terms are to be understood in the act? Second, was the trade thus restrained trade between the states?

The contention on behalf of defendants is that the association would have been valid at common law and that the Federal Antitrust law was not intended to reach any agreements that were not void and unenforceable at common law. It might be a sufficient answer to this contention to point to the decision of the Supreme Court of the United States in *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, in which it was held that contracts in restraint of interstate transportation were within the statute whether the restraints would be regarded as reasonable at common law or not. It is suggested, however, that that case related to a quasi public employment necessarily under public control and affecting public interests, and that a less stringent rule of construction applies to contracts restricting parties in sales of merchandise which is purely a private business, having in it no element of a public or quasi public character. Whether or not there is substance in such a distinction, a question we do not decide, it is certain that if the contract of association which bound the defendants was void and unenforceable at the common law because in restraint of trade, it is within the inhibition of the statute if the trade it restrained was interstate. Contracts that were in unreasonable restraint of trade at common law were not unlawful in the sense of being criminal, or giving rise to a civil action for damages

in favor of one prejudicially affected thereby, but were simply void and were not enforced by the courts. *Mogul Steamship Company* v. *McGregor, Gow & Company*, Appeal Cases (1892), 25; *Hornby* v. *Close*, L. R. 2, Q. B. 153; *Lord Campbell, C. J., in Hilton* v. *Eckersly* 6 E. & B. 47, 66; *Hannen, J., in Farrer* v. *Close*, L. R. 4, Q. B. 602, 612. The effect of the act of 1890 is to render such contracts unlawful in an affirmative or positive sense and punishable as a misdemeanor, and to create a right of civil action for damages in favor of those injured thereby and a civil remedy by injunction in favor of both private persons and the public against the execution of such contracts and the maintenance of such trade restraints.

The argument for defendants is that their contract of association was not and could not be a monopoly because their aggregate tonnage capacity did not exceed thirty per cent of the total tonnage capacity of the country; that the restraints upon the members of the association, if restraints they could be called, did not embrace all the states and were not unlimited in space; that such partial restraints were justified and upheld at common law if reasonable and only proportioned to the necessary protection of the parties; that in this case the partial restraints were reasonable because without them each member would be subjected to ruinous competition by the other, and did not exceed in degree of stringency or scope what was necessary to protect the parties in securing prices for their product that were fair and reasonable to themselves and the public; that competition was not stifled by the association because the prices fixed by it

had to be fixed with reference to the very active competition of pipe companies which were not members of the association and which had more than double the defendants' capacity; that in this way the association only modified and restrained the evils of ruinous competition, while the public had all the benefit from competition which public policy demanded.

From early times it was the policy of Englishmen to encourage trade in England and to discourage those voluntary restraints which tradesmen were often induced to impose on themselves by contract. Courts recognized this public policy by refusing to enforce stipulations of this character. The objections to such restraints were mainly two. One was that by such contracts a man disabled himself from earning a livelihood with the risk of becoming a public charge and deprived the community of the benefit of his labor. The other was that such restraints tended to give to the covenantee, the beneficiary of such restraints, a monopoly of the trade from which he had thus excluded one competitor and by the same means might exclude others. Chief Justice Parker, in 1711, in the leading case of *Mitchel* v. *Reynolds*, 1 P. Wms. 181, 190, stated these objections as follows:

"1st. The mischief which may arise from them, 1st, to the party by the loss of his livelihood and the subsistence of his family; 2d, to the public by depriving it of an useful member. Another reason is the great abuses these voluntary restraints are liable to; as, for instance, from corporations who are perpetually laboring for exclusive advantages in trade and to reduce it into as few hands as possible."

The reasons were stated somewhat more at length in *Alger* v. *Thacher*, 19 Pickering, 51, 54, in which the Supreme Judicial Court of Massachusetts said:

"The unreasonableness of contracts in restraint of trade and business is very apparent, from several obvious considerations.

"1. Such contracts injure the parties making them because they diminish their means of procuring livelihoods and a competency for their families. They tempt improvident persons for the sake of present gain to deprive themselves of the power to make future acquisitions. And they expose such persons to imposition and oppression.

"2. They tend to deprive the public of the services of men in the employments and capacities in which they may be most useful to the community as well as themselves.

"3. They discourage industry and enterprise and diminish the products of ingenuity and skill.

"4. They prevent competition and enhance prices.

"5. They expose the public to all the evils of monopoly. And this especially is applicable to wealthy companies and large corporations who have the means unless restrained by law to exclude rivalry, monopolize business and engross the market. Against evils like these, wise laws protect individuals and the public by declaring all such contracts void."

The changed conditions under which men have ceased to be so entirely dependent for a livelihood on pursuing one trade, have rendered the first and second considerations stated above less important to the community than

they were in the seventeenth and eighteenth centuries, but the disposition to use every means to reduce competition and create monopolies has grown so much of late that the fourth and fifth considerations mentioned in *Alger* v. *Thacher*, have certainly lost nothing in weight in the present day, if we may judge from the statute here under consideration and similar legislation by the states.

The inhibition against restraints of trade at common law seems at first to have had no exception. See language of Justice Hull, Year Book, 2 Henry V., folio 5, pl. 26. After a time it became apparent to the people and the courts that it was in the interest of trade that certain covenants in restraint of trade should be enforced. It was of importance as an incentive to industry and honest dealing in trade, that after a man had built up a business with an extensive good will he should be able to sell his business and good will to the best advantage and he could not do so unless he could bind himself by an enforceable contract not to engage in the same business in such a way as to prevent injury to that which he was about to sell. It was equally for the good of the public and trade when partners dissolved and one took the business, or they divided the business, that each partner might bind himself not to do anything in trade thereafter which would derogate from his grant of the interest conveyed to his former partner. Again when two men become partners in a business, although their union might reduce competition, this effect was only an incident to the main purpose of a union of their capital, enterprise and energy to carry on a successful business,

and one useful to the community. Restrictions in the articles of partnership upon the business activity of the members with a view of securing their entire effort in the common enterprise were, of course, only ancillary to the main end of the union, and were to be encouraged. Again, when one in business sold property with which the buyer might set up a rival business, it was certainly reasonable that the seller should be able to restrain the buyer from doing him an injury which, but for the sale, the buyer would be unable to inflict. This was not reducing competition but was only securing the seller against an increase of competition of his own creating. Such an exception was necessary to promote the free purchase and sale of property.

Again, it was of importance that business men and professional men should have every motive to employ the ablest assistants, and to instruct them thoroughly, but they would naturally be reluctant to do so unless such assistants were able to bind themselves not to set up a rival business in the vicinity after learning the details and secrets of the business of their employers. In a case of this last kind, *Mallan* v. *May*, 11 M. & W. 652, Baron Parke said, "Contracts for the partial restraint of trade are upheld not because they are advantageous to the individual with whom the contract is made and a sacrifice *pro tanto* of the rights of the community, but because it is for the benefit of the public at large that they should be enforced. Many of these partial restraints on trade are perfectly consistent with public convenience and the general interest and have been supported; such is the case of the disposing of a shop in a

particular place with a contract on the part of the vendor not to carry on a trade in the same place. It is in effect the sale of a good will and offers an encouragement to trade by allowing a party to dispose of all the fruits of his industry. . . . And such is the class of cases of much more frequent occurrence and to which this present case belongs of a tradesman, manufacturer or professional man taking a servant or clerk into his service with a contract that he will not carry on the same trade or profession within certain limits. . . . In such a case the public derives an advantage in the unrestrained choice which such a stipulation gives to the employer of able assistants and the security it affords that the master will not withhold from the servant instruction in the secrets of his trade and the communication of his own skill and experience from the fear of his afterward having a rival in the same business."

For the reasons given then, covenants in partial restraint of trade are generally upheld as valid when they are agreements (1) by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold; (2) by a retiring partner not to compete with the firm; (3) by a partner pending the partnership not to do anything to interfere by competition or otherwise with the business of the firm; (4) by the buyer of property not to use the same in competition with the business retained by the seller; and (5) by an assistant, servant or agent not to compete with his master or employer after the expiration of his time of service. Before such agreements are upheld, however, the court must find that the restraints

attempted thereby are reasonably necessary, (1, 2, 3), to the enjoyment by the buyer of the property, good will or interest in the partnership bought, or (4) to the legitimate ends of the existing partnership, or (5) to the prevention of possible injury to the business of the seller from use by the buyer of the thing sold, or (6) to protection from the danger of loss to the employer's business caused by the unjust use on the part of the employe of the confidential knowledge acquired in such business.

Under the first class, come the cases of *Mitchel* v. *Reynolds*, 1 P. Wms. 181; *Forle* v. *Parke*, 131 U. S. 88; *Nordenfeldt* v. *The Maxim Nordenfeldt Company*, Appeal Cases (1894), 534; *Rousillon* v. *Rousillon*, 14 Ch. D. 351; *Leather Cloth Company* v. *Lorsont*, L. R. 9 Eq. 345; *Whittaker* v. *Howe*, 3 Beav. 383; *Diamond Match Company* v. *Roeber*, 106 N. Y. 473; *Tode* v. *Gross*, 127 N. Y. 480; *Beal* v. *Chase*, 31 Mich. 190; *Hubbard* v. *Miller*, 27 Mich. 15; *National Benefit Co.* v. *Union Hospital Co.*, 45 Minn. 272; *Whitney* v. *Slayton*, 40 Me. 224; *Pierce* v. *Fuller*, 8 Mass. 222; *Richards* v. *American Desk & Seating Company*, 87 Wis. 503. In the second class are *Tallis* v. *Tallis*, 1 El. & Bl. 391, and *Lange* v. *Werk*, 2 O. S. 520. In the third class are *Troy Laundry Machine Company* v. *Dolph*, 138 U. S. 617; 28 Fed. Rep. 553; and *Mathews* v. *The Associated Press*, 136 N. Y. 333. In the fourth class are *American Strawboard Company* v. *Haldeman*, 83 Fed. R. 619, and *Hitchcock* v. *Anthony*, 83 F. R. 779, both decisions of this court; *Oregon Navigation Co.* v. *Winsor*, 20 Wallace, 64; *Dunlop* v. *Gregory*, 9 N. Y. 241; *Hodge* v. *Sloan*, 107 N. Y.

244, while in the fifth class are the cases of *Horner* v. *Ashford*, 3 Bingh. 322; *Homer* v. *Graves*, 7 Bingh. 735; *Hitchcock* v. *Coker*, 6 Ad. & El. 454; *Ward* v. *Byrne*, 5 M. & W. 547; *Dubowski & Sons* v. *Goldstein*, 1 Q. B. (1896), 478; *Peels* v. *Saalfeld*, 2 Ch. (1892), 149; *Taylor* v. *Blanchard*, 13 Allen, 370; *Keeler* v. *Taylor*, 53 Pa. St. 467; *Herreshoff* v. *Boutineau*, 17 R. I. 3.

It would be stating it too strongly to say that these five classes of covenants in restraint of trade include all of those upheld as valid at the common law, but it would certainly seem to follow from the tests laid down for determining the validity of such an agreement that no conventional restraint of trade can be enforced unless the covenant embodying it is merely ancillary to the main purpose of a lawful contract and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract or to protect him from the dangers of an unjust use of those fruits by the other party. In *Horner* v. *Graves*, 7 Bingham, 735, Chief Justice Tindal, who seems to be regarded as the highest English judicial authority on this branch of the law (see Lord Macnaghten's judgment in *Nordenfeldt* v. *The Maxim Nordenfeldt Co.*, Appeal Cases (1894), 535, 567), used the following language: "We do not see how a better test can be applied to the question whether this is or not a reasonable restraint of trade than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favor of whom it is given and not so large as to interfere with the interests of the public. Whatever restraint is larger than the necessary protection of the party

requires can be of no benefit to either; it can only be oppressive, it is in the eye of the law unreasonable. Whatever is injurious to the interests of the public is void on the ground of public policy."

This very statement of the rule implies that the contract must be one in which there is a main purpose, to which the covenant in restraint of trade is merely ancillary. The covenant is inserted only to protect one of the parties from the injury which in the execution of the contract or enjoyment of its fruits he may suffer from the unrestrained competition of the other. The main purpose of the contract suggests the measure of protection needed and furnishes a sufficiently uniform standard by which the validity of such restraints may be judicially determined. In such a case if the restraint exceeds the necessity presented by the main purpose of the contract it is void for two reasons; first, because it oppresses the covenantor without any corresponding benefit to the covenantee, and, second, because it tends to a monopoly. But where the sole object of both parties in making the contract as expressed therein, is merely to restrain competition and enhance or maintain prices, it would seem that there was nothing to justify or excuse the restraint, that it would necessarily have a tendency to monopoly and therefore would be void. In such a case there is no measure of what is necessary to the protection of either party except the vague and varying opinion of judges as to how much, on principles of political economy, men ought to be allowed to restrain competition. There is in such contracts no main lawful purpose, to subserve which,

partial restraint is permitted and by which its reasonableness is measured, but the sole object is to restrain trade in order to avoid the competition which it has always been the policy of the common law to foster.

Much has been said in regard to the relaxing of the original strictness of the common law in declaring contracts in restraint of trade void as conditions of civilization and public policy have changed, and the argument drawn therefrom is that the law now recognizes that competition may be so ruinous as to injure the public and, therefore, that contracts made with a view to check such ruinous competition and regulate prices, though in restraint of trade and having no other purpose, will be upheld. We think this conclusion is unwarranted by the authorities when all of them are considered. It is true that certain rules for determining whether a covenant in restraint of trade ancillary to the main purpose of a contract was reasonably adapted and limited to the necessary protection of a party in the carrying out of such purpose have been somewhat modified by modern authorities. In *Mitchell* v. *Reynolds*, 1 P. Wms., 181, the leading early case on the subject in which the main object of the contract was the sale of a bakehouse, and there was a covenant to protect the purchaser against competition by the seller in the bakery business, Chief Justice Parker laid down the rule that, it must appear before such a covenant could be enforced, that the restraint was not general but particular or partial as to places or persons, and was upon a good and adequate consideration so as to make it a proper and useful contract. Subsequently it was decided in *Hitchcock* v. *Coker*,

6 Ad. & El. 454, that the adequacy of the consideration was not to be inquired into by the court if it was a legal one and that the operation of the covenant need not be limited in time.

More recently the limitation that the restraint could not be general or unlimited as to space has been modified in some cases by holding that if the protection necessary to the covenantee reasonably requires a covenant unrestricted as to space, it will be upheld as valid. *Whittaker* v. *Howe*, 3 Beav. 383; *Leather Cloth Co.* v. *Lorsont*, L. R. 9 Eq. Cases, 345; *Rousillon* v. *Rousillion*, 14 Ch. Div. 351; *Nordenfeldt* v. *Maxim Nordenfeldt Co.*, Appeal Cases (1894), 535; see also *Fowle* v. *Park*, 131 U. S. 88; *Diamond Match Co.* v. *Roeber*, 106 N. Y. 473. But these cases all involved contracts in which the covenant in restraint of trade was ancillary to the main and lawful purpose of the contract and was necessary to the protection of the covenantee in the carrying out of that main purpose. They do not manifest any general disposition on the part of the courts to be more liberal in supporting contracts having for their sole object the restraint of trade, than did the courts of an earlier time. It is true that there are some cases in which the courts mistaking, as we conceive, the proper limits of the relaxation of the rules for determining the unreasonableness of restraints of trade have set sail on a sea of doubt and have assumed the power to say in respect to contracts which have no other purpose and no other consideration on either side than the mutual restraint of the parties, how much restraint of competition is in the public interest and how much is not. The manifest danger in the

administration of justice according to so shifting, vague and indeterminate standard would seem to be a strong reason against adopting it. The cases assuming such a power in the courts are *Wickens* v. *Evans*, 3 Young & Jervis, 318; *Collins* v. *Locke*, 4 Appeal Cases, 674; *Ontario Salt Co.* v. *The Merchants Salt Company*, 18 Grant's (Up. Can.), 540; *Kellogg* v. *Larkin*, 3 Pinney, 123; *Leslie* v. *Lorillard*, 110 N. Y. 519.

In *Wickens* v. *Evans*, three trunk manufacturers of England who had competed with each other throughout the realm to their loss, agreed to divide England into three districts, each party to have one district exclusively for his trade, and if any stranger should invade the district of either as a competitor, they agreed "to meet to devise means to promote their own views." The restraint was held partial and reasonable because it left the trade open to any third party in either district. In answer to the suggestion that such an agreement to divide up the beer business of London among the London brewers would lead to the abuses of monopoly, it was replied that outside competition would soon cure such abuses, an answer that would validate the most complete local monopoly of the present day. It may be, as suggested by the court, that local monopolies can not endure long because their very existence tempts outside capital into competition, but the public policy embodied in the common law requires the discouragement of monopolies, however temporary their existence may be. The public interest may suffer severely while new competition is slowly developing. The case can hardly be reconciled with later cases, hereafter to be referred to in England and America. It

is true that there was in this case no direct evidence of a desire by the parties to regulate prices, and it has been sometimes explained on the theory that the agreement was solely to reduce the expenses incident to a business covering the realm by restricting its territorial extent; but it is difficult to escape the conclusion that the restraint upon each two of the three parties was imposed to secure to the other a monopoly and power to control prices in the territory assigned to him, because the final clause in the contract implies that when it was executed there were no other competitors except the parties in the territory divided.

Collins v. *Locke* was a case in the Privy Council. The action was brought to enforce certain articles of agreement by and between four of the leading master stevedore contracting firms in Melbourne, Australia, who did practically all the business at that port. The court (composed of Sir Barnes Peacock, Sir Montague E. Smith and Sir Robert P. Collier), describes the scope and purposes of the agreement and the view of the court as follows: "The objects which this agreement has in view are to parcel out the stevedoring business of the port among the parties to it and so to prevent competition, at least among themselves, and also it may be to keep up the price to be paid for the work. Their Lordships are not prepared to say that an agreement having these objects is invalid if carried into effect by proper means, that is by provisions reasonably necessary for the purpose, though the effect of them might be to create a partial restraint upon the power of the parties to exercise their trade." No attempt is made to justify the view

thus comprehensively stated or to support it by authority, or to reconcile it with the general doctrine of the common law that contracts restraining competition, raising prices and tending to a monopoly as this is conceded by the court to have been are void. The court ignores the public interest that prices shall be regulated by competition and assumes the power in the court to uphold and enforce a contract securing a monopoly if it affect only one port so as to be but a partial restraint of trade. The case is directly at variance with the decision of the Supreme Court of Illinois in *Moore* v. *Bennett*, 141 Ill. 69, hereafter discussed and can not be reconciled in principle with many of the other cases cited.

The Canadian case of the *Ontario Salt Co.* v. *The Merchants Salt Co.*, is another one upon which counsel for the defendants rely. That was the decision of a vice-chancellor. Six salt companies, in order to maintain prices, combined and put their business under the control of a committee and agreed not to sell except through the committee. It was held that because it appeared that there were other salt companies in the province and because the combiners denied that they intended to raise prices, but only to maintain them, the contract of union was not in unlawful restraint of trade. The conclusion and argument of the court in *Salt Co.* v. *Guthrie*, 35 O. S., hereafter stated would seem to be a sufficient answer to this case.

Kellogg v. *Larkin*, 3 Pinney, 123, was an early case in Wisconsin in which the action was on the covenant of a warehouse man in a lease of his warehouse, by which he

agreed to devote his services to the lessee at certain compensation and not to purchase or store wheat in the Milwaukee market. The covenant was held valid. Had nothing else appeared in the case the conclusion would have been clearly right because such a covenant might well have been reasonably necessary to the protection of the lessee in his enjoyment of the warehouse and the good-will of the lessor. But it further appeared that this lease with the covenant was only one of many such executed by the warehousemen of Milwaukee to the united grain dealers of that city to enable the latter to obtain absolute control of the wheat market in Milwaukee. The court held the latter combination valid also. The decision can not be upheld in view of the more modern authorities hereafter referred to.

The case of *Leslie* v. *Lorillard*, 110 N. Y. 519, would seem to be an authority against our view. In that case a stockholder sought to restrain the payment of an annual payment about to be made by the Old Dominion Steamship Company under a contract by which it bought off the Lorillard Steamship Company from continuing in competition with it in carrying passengers and freight between New York and Norfolk. The contract was held valid although it had no purpose except the restraining of competition and so far as appears the obtaining of the complete control of the business. The case is rested on *Diamond Match Company* v. *Roeber*, 106 N. Y. 473, which was a case of the purchase of property and good will. It proceeds on the general proposition "that competition is not invariably a public benefaction; for it

may be carried on to such a degree as to become a general evil," and thus leaves it to the discretion of the court to say how much competition is desirable and how much is mischievous, and accordingly to determine whether a contract is bad or not. The case is directly opposed to *Anderson* v. *Jett*, 89 Ky. 375, hereafter cited. It should be said that nothing appears in the report of the case to show directly that the purpose of the contract was to reserve the entire business to the Dominion Company or to secure to it the power of regulating prices but this natural inference from the terms of the contract is not negatived.

The case of *Mogul Steamship Company* v. *McGregor, Gow & Co.*, Appeal Cases (1892), 25, has been cited to sustain the position of the defendants. It does not do so. It was a suit for damages brought by a company engaged in the tea-carrying trade at Hankow, China, against six other companies engaged in the same trade, for loss inflicted by an alleged unlawful conspiracy entered into by them to drive the plaintiff out of the trade and to obtain control of the trade themselves. It appeared that the defendants agreed to conform to a plan of association, by which they should constantly underbid the plaintiff, and take away his trade by offering exceptional and very favorable terms to customers dealing exclusively with the members of the association; and that they did this to control the business the next season after he had been thus driven out of competition. It was held by the House of Lords that this was not an unlawful and indictable conspiracy giving rise to a cause

of action by the person injured thereby; but it was not held that the contract of association entered into by the defendants was not void and unenforceable at common law. On the contrary, Lord Bramwell, in his judgment (at page 46), and Lord Hannen, in his, (at page 58), distinctly say that the contract of association was void as in restraint of trade, but all the Law Lords were of opinion that contracts void as in restraint of trade were not unlawful in a criminal sense, and gave no right of action for damages to one injured thereby. The statute we are considering expressly gives such contracts a criminal and unlawful character. It is manifest, therefore, that whatever of relevancy the Mogul Steamship Company case has in this discussion, makes for, rather than against, our conclusion.

Two other cases deserve mention here. They are *The Central Shade Roller Co.* v. *Cushman*, 143 Mass. 353, and *Gloucester Isinglass & Glue Company* v. *Russian Cement Co.*, 154 Mass. 92. In these cases it was held that contracts in restraint of trade are not invalid if they affect trade in articles which, though useful and convenient, are not articles of prime or public necessity, and therefore contracts between dealers made to secure complete control of the manufacture and sale of such articles were supported. In the first case, the article involved was a fastening of a certain shade roller and in the other was glue made from fish skins. We think the cases hereafter cited show that the common law rule against restraint of trade extends to all articles of merchandise and that the introduction of such a distinction only furnishes another opportunity for courts to give effect to the

varying economical opinions of its individual members It might be difficult to say why it was any more important to prevent restraints of trade in beer, mineral water, leather cloth and wire cloth than of trade in curtain shades or glue. However this may be, the cases do not touch the case at bar, because the same court in *Gamewell Fire Alarm Tel. Co.* v. *Crane*, 160 Mass. 50, held that fire alarm telegraph instruments were articles of sufficient public necessity to render unreasonable restraints of trade in them void, and certainly such articles are not more necessary for public use than water, gas and sewer pipe.

There are other cases upon which counsel of defendants rely which in our judgment have no bearing on the issue, or if they have, are clearly within the rules we have already stated. One is a case in which a railroad company made a contract with a sleeping car company by which the latter agreed to do the sleeping car business of the railway company on a number of conditions, one of which was that no other company should be allowed to engage in the sleeping car business on the same line. *Chicago, &c., Railroad Co.* v. *Pullman Southern Car Company*, 139 U. S. 79. The main purpose of such a contract is to furnish sleeping car facilities to the public. The railroad company may discharge this duty itself to the public and allow no one else to do it, or it may hire some one to do it and to secure the necessary investment of capital in the discharge of the duty may secure to the sleeping car company the same freedom from competition that it would have itself in discharging the duty. The restraint upon itself is properly proportioned to and is only ancillary to the main purpose of the contract which

is to secure proper facilities to the public. Exactly the same principle applies to similarly exclusive contracts with express companies, and stockyard delivery companies. The Express Cases, 117 U. S. 1; *Covington Stockyards Co.* v. *Keith*, 139 U. S. 128; *Butchers & Drovers Stockyards Co.* v. *Louisville & Nashville R. R. Co.*, 31 U. S. Ap. 252.

The fact is that it is quite difficult to conceive how competition would be possible upon the same line of railway between sleeping car companies, or express companies. Such contracts involve the hauling of sleeping cars, or express cars on each express train, the assignment of offices in each station, and various running arrangements which it would be an intolerable burden upon the railroad company to make and execute for two companies at the same time. And the same is true of contracts with a stock delivery company. The railway company could not ordinarily be expected to have more than one general station for the delivery of cattle in any one town; it would only be required by the nature of its employment to furnish such facilities as were reasonably sufficient for the business at that place. There is hardly more objection on the ground of public policy to such a restriction upon a railway company in cases like these than there would be to a restriction upon a lessor not to allow the subject matter of the lease to be enjoyed by any one but the lessee during the lease. The privilege when granted is hardly capable of other than exclusive enjoyment. The public interest is satisfactorily secured by the requirement which may be enforced by any member of the public, to wit, that the charges allowed shall

not be unreasonable, and the business is of such a public character that it is entirely subject to legislative regulation in the same interest.

Having considered the cases upon which the counsel for the defendants have relied to maintain the proposition that contracts having no purpose but to restrain competition and maintain prices, if reasonable, will be held valid, we must now pass in rapid review the cases that make for an opposite view.

In *People* v. *Sheldon*, 139 N. Y. 251, all the coal dealers in the city of Lockport, N. Y., entered into a contract of association, forming a coal exchange to prevent competition by constituting the exchange the sole authority to fix the price to be charged by members for coal sold by them, and the price was thus fixed. The court approved a charge to the jury that even if this was merely a combination between independent coal dealers to prevent competition between themselves for the due protection of the parties to it against ruinous rivalry and although no attempt was made to charge unreasonable or excessive prices, it was inimical to trade and commerce, whatever might be done under it, and was within the state statute making a conspiracy injurious to trade indictable. Said Andrews, C. J. (264): "If agreements and combinations to prevent competition in prices are or may be hurtful to trade, the only sure remedy is to prohibit all agreements of that character. If the validity of such an agreement was made to depend upon actual proof of public prejudice or injury, it would be very difficult in any case to establish the invalidity, although the moral evidence might be very convincing." See to

the same effect *Judd* v. *Harrington*, 139 N. Y. 105; *Leonard* v. *Poole*, 114 N. Y. 371; *The DeWitt Wire Cloth Company* v. *The New Jersey Wire Cloth Company*, 16 Daly, 529.

In *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St. 173, five coal companies controlling the bituminous coal trade in Northern Pennsylvania agreed to allow a committee to fix prices and rates of freight and to fix proportion of sales by each. Competition was not destroyed because the anthracite coal and Cumberland bituminous coal were sold in competition with this coal. The association was, nevertheless, held void as in illegal restraint of trade and competition and tending to injure the public. In *Nester* v. *Brewing Co.*, 161 Pa. St. 473, forty-five brewers in Philadelphia made an agreement to sell beer in Philadelphia and Camden at a certain price to be fixed by a committee of their number. Though beer could hardly be said to be an article of prime necessity like coal, yet as it was an article of merchandise, the contract was held void as in restraint of trade and tending to a monopoly.

In *Salt Company* v. *Guthrie*, 35 O. S. 666, the salt manufacturers of a salt producing territory in Ohio, with some exceptions, combined to regulate the price of salt by preventing ruinous competition between themselves and agreed to sell only at prices fixed by a committee of their number. The Supreme Court of Ohio held the contract void. Judge McIlvaine, who delivered the opinion of the court, said: "The clear tendency of such an agreement is to establish a monopoly and to destroy competition in trade and for that reason on the ground of public

policy courts will not aid in its enforcement. It is no answer to say that competition in the salt trade was not in fact destroyed or that the price of the commodity was not unreasonably advanced. Courts will not stop to inquire as to the degree of injury inflicted upon the public; it is enough to know that the inevitable tendency of such contracts is injurious to the public." Other Ohio cases which presented similar facts and in which the same rule was enforced are *Emery* v. *Candle Co.*, 47 O. S. 320, and *Hoffman* v. *Brooks*, 11 Weekly Law Bulletin, 258.

In *Anderson* v. *Jett*, 89 Kentucky 375, two owners of steamboats running on the Kentucky river made an agreement to keep up rates and divide net profits to prevent ruinous competition and reduced rates. The contract was held void.

In *Chapin* v. *Brown*, 83 Iowa, 156, the grocerymen in a town in order to avoid a trade in butter which was burdensome, agreed not to buy any butter or to take it in trade except for use in their own families, so as to throw the business into the hands of one man who dealt in butter exclusively. The agreement was held invalid because in restraint of trade and tending to create a monopoly.

In *Craft* v. *McConoughy*, 79 Ill. 346, five grain dealers in Rochelle, Ill., agreed to conduct their business as if independent of each other, but secretly to fix prices at which they would sell grain and to divide profits in a certain proportion. This was held void as in restraint of trade and tending to create a monopoly. In *Moore* v. *Bennett*, 140 Ill. 69, articles of association entered into by only a part of the stenographers of Chicago to fix a

schedule of prices and prevent competition among their members and a consequent reduction of prices, was held void. The court said: "A combination among a number of persons engaged in a particular business to stifle or prevent competition and thereby to enhance or diminish prices to a point above or below what they would be, if left to the influence of unrestricted competition, is contrary to public policy. Contracts in partial restraint of trade which the law sustains are those entered into by a vendor of a business and its good will with its vendee by which the vendor agrees not to engage in the same business within a limited territory and the restraint, to be valid, must be no more extensive than is reasonably necessary for the protection of the vendee in the enjoyment of the business purchased." As already said this case is in direct conflict with *Collins* v. *Locke*, 4 Appeal Cases, 674, discussed above. To the same effect as *Mac* v. *Bennett* are *Ford* v. *Milkshippers Association*, 155 Ill. 166, and *Bishop* v. *American Preservers Co.*, 157 Ills. 284.

In *Milwaukee Masons & Builders Association* v. *Niezorwski*, 95 Wis. 129, the suit was on a note given in pursuance of the secret rules of an association of sixty out of the seventy-five master masons in Milwaukee, by which all bids for work about to be let were first made to the association and the lowest bidder was then required to add 6 per cent to his bid, and if the bid was more than 8 per cent below the next lowest bidder, more than 6 per cent might be added. Each member was required to pay to the association 6 per cent of his estimates when due, for subsequent distribution. In declaring the contract void, the court said: "The combination in question

is contrary to public policy and strikes at the interests of those of the public desiring to build and between whom and the association or the members thereof there exist no contract relations."

In *Vulcan Powder Co.* v. *Powder Co.*, 96 Cal. 510, four powder companies of California agreed that each should sell at a price to be fixed by a committee of their representatives and should pay over to the others the profits or any excess of sales over a fixed proportion of the total sales. The contract was held void.

In *Texas Oil Co.* v. *Adoue*, 83 Texas, 650, five owners of cotton seed oil mills in Texas made an agreement not to sell at less than certain agreed prices. One guaranteed profits to the four others, and suit was brought on the guaranty. It was held void as restraining trade and tending to a monopoly even though the evidence failed to establish that it effected a monopoly.

In *India Bagging Association* v. *Kirk & Co.*, 14 La. Ann. 168, eight commercial firms in New Orleans holding a large quantity of cotton bagging, entered into an agreement by which they stipulated that for three months no member should sell a bale except by a vote of the majority. It was held that the contract was "palpably and unequivocally a combination in restraint of trade and to enhance the price in the market of an article of primary necessity to cotton planters. Such combinations are contrary to public order and can not be enforced in a court of justice."

In *Hilton* v. *Eckersley*, 6 E. & B. 47, it was held that an agreement between eighteen cotton manufacturers to submit to the control of a committee of their number for

twelve months the question as to prices to be paid for labor and the terms of employment, in order to resist the aggressions of an association of workingmen, was void and unenforceable, because in restraint of trade. In *Cranston v. Whitelegg Brothers*, 63 Law Times (N. S.), 455, a case in the Queen's Bench Division before Day & Lawrence, J. J., the action was brought to enforce a penalty under the rules of the Bolton Mineral Water Manufacturers Association, which recited that the object of the association was to maintain the price of mineral water and bound the members for ten years not to sell at less that 9d. a dozen bottles or at not less than any higher price fixed by the committee, on penalty of ten pounds for each violation. Day, Justice, said: "If a contract for raising prices against the public interest is a contract in restraint of trade, this is undoubtedly such a contract. During the last hundred years great changes have taken place in the views of the public of the legislature, and therefore, of the judges on the matter and many old fashioned offenses has disappeared; but the rule still obtains that combinations for the mere purpose of raising prices is not enforceable in a court of law. This contract is illegal in the sense of not being enforceable; it is not necessary that it should be such as to form the ground of criminal proceedings."

In the foregoing cases, the only consideration of the agreement restraining the trade of one party was the agreement of the other to the same effect and there was no relation of partnership or of vendor and vendee, or of employer and employe. Where such relation exists between the parties, as already stated restraints are usually

enforceable if commensurate only with the reasonable protection of the covenantee in respect to the main transactions affected by the contract. But in recent years, even the fact that the contract is one for the sale of property or of business and good will or for the making of a partnership or a corporation has not saved it from invalidity if it could be shown that it was only part of a plan to acquire all the property used in a business by one management with a view to establishing a monopoly. Such cases go a step farther than those already considered. In them, the actual intent to monopolize must appear. It is not deemed enough that the mere tendency of the provisions of the contract should be to restrain competition. In such cases the restraint of competition ceases to be ancillary and becomes the main purpose of the contract and the transfer of property and good will or the partnership agreement is merely ancillary and subordinate to that purpose. The principal cases of this class are *Richardson* v. *Buhl*, 77 Mich. 632; *Arnot* v. *Pittston Coal Company*, 68 N. Y. 558; *People* v. *Milk Exchange*, 145 N. Y. 267; *People* v. *New York Sugar Refining Co.*, 54 Hun. 366; *State* v. *Nebraska Distilling Co.*, 29 Neb. 70; *State* v. *Standard Oil Co.*, 49 O. S. 137; *American Biscuit & Mfg. Co.* v. *Klotz*, 44 Fed. Rep. 721; *The Distilling & Cattle Feeding Co.* v. *People*, 156 Ills. 448; *Pittsburg Carbon Co.* v. *McMillan*, 119 N. Y. 46; *National Harrow Co.* v. *Hench*, 83 Fed. Rep. 36; *Pacific Factor Co.* v. *Adler*, 90 Cal. 110; *Santa Clara Co.* v. *Hayes*, 76 Cal. 387.

In addition to the cases cited, there are others which sustain the general principle, but in them there existed

the additional reason for holding the contracts invalid, that the parties were engaged in a quasi public employment. They are *Gibbs* v. *The Baltimore Gas Co.*, 130 U. S. 396; *People* v. *Chicago Gas Trust Co.*, 130 Ills. 268; *Stockton* v. *Central R. R. Co.*, 50 N. J. Eq. 52, and *Transportation Company* v. *Pipe Line Co.*, 22 W. Va. 600; *Hooker* v. *Vandewater*, 4 Denio, 349; *Stanton* v. *Allen*, 5 Denio, 434; *Central R. R. Co.* v. *Collins*, 40 Ga. 582; *Hazlehurst* v. *Savannah*, 43 Ga. 1.

Upon this review of the law and the authorities, we can have no doubt that the association of the defendants, however reasonable the prices they fixed, however great the competition they had to encounter, and however great the necessity for curbing themselves by joint agreement from committing financial suicide by ill-advised competition, was void at common law, because in restraint of trade and tending to a monopoly. But the facts of the case do not require us to go so far as this, for they show that the attempted justification of this association on the grounds stated is without foundation.

The defendants being manufacturers and vendors of cast iron pipe entered into a combination to raise the prices for pipe for all the states west and south of New York, Pennsylvania and Virginia, constituting considerably more than three-quarters of the territory of the United States and significantly called by the associates "pay" territory. Their joint annual output was 220,000 tons. The total capacity of all the other cast iron pipe manufacturers in the "pay" territory was 170,500 tons. Of this, 45,000 tons was the capacity of mills in Texas, Colorado and Oregon, so far removed from that part of

the "pay" territory where the demand was considerable that necessary freight rates excluded them from the possibility of competing, and 12,000 tons was the possible annual capacity of a mill at St. Louis, which was practically under the same management as that of one of the defendants' mills. Of the remainder of the mills in "pay" territory and outside of the combination, one was at Columbus, Ohio, two in Northern Ohio, and one in Michigan. Their aggregate possible annual capacity was about one-half the usual annual output of the defendants' mills. They were, it will be observed, at the extreme northern end of the "pay" territory, while the defendants' mills at Cincinnati, Louisville, Chattanooga and South Pittsburg, and Anniston and Bessemer were grouped much nearer to the center of the "pay" territory. The freight upon cast iron pipe amounts to a considerable percentage of the price at which manufacturers can deliver it at any great distance from the place of manufacture. Within the margin of the freight per ton which eastern manufacturers would have pay to deliver pipe in "pay" territory, the defendants, by controlling two-thirds of the output in "pay" territory, were practically able to fix prices. The competition of the Ohio and Michigan mills of course somewhat affected their power in this respect in the northern part of the "pay" territory, but the further south the place of delivery was to be, the more complete the monopoly over the trade which the defendants were able to exercise, within the limit already described. Much evidence is adduced upon affidavit to prove that defendants had no power arbitrarily to fix

prices and that they were always obliged to meet competition. To the extent that they could not impose prices on the public in excess of the cost price of pipe with freight from the Atlantic seaboard added, this is true, but within that limit they could fix prices as they chose. The most cogent evidence that they had this power is the fact everywhere apparent in the record that they exercised it. The details of the way in which it was maintained are somewhat obscured by the manner in which the proof was adduced in the court below upon affidavits solely and without the clarifying effect of cross-examination, but quite enough appears to leave no doubt of the ultimate fact.

The defendants were by their combination therefore able to deprive the public in a large territory of the advantages otherwise accruing to them from the proximity of defendants' pipe factories and, by keeping prices just low enough to prevent competition by eastern manufacturers, to compel the public to pay an increase over what the price would have been if fixed by competition between defendants, nearly equal to the advantage in freight rates enjoyed by defendants over eastern competitors. The defendants acquired this power by voluntarily agreeing to sell only at prices fixed by their committee and by allowing the highest bidder at the secret "auction pool" to become the lowest bidder of them at the public letting. Now, the restraint thus imposed on themselves was only partial. It did not cover the United States. There was not a complete monopoly. It was tempered by the fear of competition and it affected only a part of

the price. But this certainly does not take the contract of association out of the annulling effect of the rule against monopolies. In *United States* v. *E. C. Knight Company*, 156 U. S. 1, 16, Chief Justice Fuller, in speaking for the court said: "Again all the authorities agree that in order to vitiate a contract or combination, it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

It has been earnestly pressed upon us that the prices at which the cast iron pipe was sold in "pay" territory were reasonable. A great many affidavits of purchasers of pipe in "pay" territory, all drawn by the same hand or from the same model, are produced in which the affiants say that in their opinion the prices at which pipe has been sold by defendants have been reasonable. We do not think the issue an important one, because, as already stated, we do not think that at common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices, had they chosen to do so. But if it were important we should unhesitatingly find that the prices charged in the instances which were in evidence were unreasonable. The letters from the manager of the Chattanooga foundry written to the other defendants and discussing the prices fixed by the association, do not leave the slightest doubt upon this point, and outweigh the perfunctory affidavits produced by the defendants.

The cost of producing pipe at Chattanooga, together with a reasonable profit, did not exceed $15 a ton. It could have been delivered at Atlanta at $17 to $18 a ton, and yet the lowest price which that foundry was permitted by the rules of the association to bid was $24.25. The same thing was true all through "pay" territory to a greater or less degree and especially at "reserved" cities.

Another aspect of this contract of association brings it within the term used in the statute, "a conspiracy in restraint of trade." A conspiracy is a combination of two or more persons to accomplish an unlawful end by lawful means or a lawful end by unlawful means. In the answer of the defendants, it is averred that the chief way in which cast iron pipe is sold is by contracts let after competitive bidding invited by the intending purchaser. It would have much interfered with the smooth working of defendants' association, had its existence and purposes become known to the public. A part of the plan was a deliberate attempt to create in the minds of the members of the public inviting bids the belief that competition existed between the defendants. Several of the defendants were required to bid at every letting and to make their bids at such prices that the one already selected to obtain the contract should have the lowest bid. It is well settled that an agreement between intending bidders at a public auction or a public letting not to bid against each other and thus to prevent competition is a fraud upon the intending vendor or contractor, and the ensuing sale or contract will be set aside. *Breslin* v. *Brown*, 24 O. S. 565; *Atchason* v. *Mallon*, 43 N. Y. 147; *Loyd* v. *Malone*, 23 Ill. 41:

Wooton v. *Hinkle*, 20 Mo. 290; *Phippen* v. *Stickney*, 3 Mete. 384; *Kearney* v. *Taylor*, 15 How. 494, 519; *Wilbur* v. *How*, 8 Johns, 443; *Hannah* v. *Fife*, 27 Mich. 172; *Gibbs* v. *Smith*, 115 Mass. 592; *Swan* v. *Chorpenning*, 20 Cal. 182; *Gardner* v. *Morse*, 25 Me. 140; *Ingram* v. *Ingram*, 4 Jones, L. 188; *Brisbane* v. *Adams*, 3 N. Y. 129; *Woodruff* v. *Berry*, 40 Ark. 251; Wald's Pollock on Contracts, 310, note by Mr. Wald, and cases cited. The case of *Jones* v. *North*, L. R. 19 Eq. 426, to the contrary can not be supported. The largest purchasers of pipe are municipal corporations and they are by law required to solicit bids for the sale of pipe in order that the public may get the benefit of competition. One of the means adopted by the defendants in their plan of combination was this illegal and fraudulent effort to evade such laws and to deceive intending purchasers. No matter what the excuse for the combination by defendants in restraint of trade, the illegality of the means stamps it as a conspiracy and so brings it within that term of the Federal statute.

The second question is whether the trade restrained by the combination of the defendants was interstate trade. The mills of the defendants were situated, two in Alabama, two in Tennessee, one in Kentucky, and one in Ohio. The invariable custom in sales of pipe required the seller to deliver the pipe at the place where it was to be used by the buyer and to include in the price the cost of delivery. The contracts, as the answer of the defendants aver, were invariably made after public letting at the home and in the state of the buyer. The "pay" territory, sales in which it was the professed object of the

defendants to regulate by their contract of association, included thirty-six states. The cities which were especially "reserved" for the benefit of the defendants were Atlanta and Anniston, "reserved" to the Anniston mill in Alabama, New Orleans and Chattanooga, "reserved" to the Chattanooga mill in Tennessee, St. Louis and Birmingham, "reserved" to Bessemer mill in Alabama, Omaha, "reserved" to the South Pittsburg mill in Tennessee, Louisville, New Albany and Jeffersonville, "reserved" to Dennis Long & Co., of Louisville, and Cincinnati, Newport and Covington, "reserved" to the Addyston mill in Ohio. Under the agreement every request for bids from any place, except the "reserved" cities, sent to any one of the defendants was submitted to the central committee, who fixed a price and the contract was awarded to that member, who would agree to pay for the benefit of the other members of the association the largest "bonus."

In the case of the "reserved" cities, the successful bidder having been already fixed, the association determined the price and bonus to be paid. The contract of association restrained every defendant except the one selected to receive the contract from soliciting (in good faith) or making, a contract for pipe with the intending purchaser at all, and restrained the defendant so selected from making the contract except at the price fixed by the committee. In cases of pipe to be purchased in any state of the thirty-six in "pay" territory, except four, each one of the defendants, by his contract of association, restrained his freedom of trade in respect to making a contract in that state for the sale of pipe to be delivered

across state lines, five of them agreeing not to make such a contract at all, and the sixth agreeing not to make the contract below a fixed price. With respect to sales in Ohio, Kentucky, Tennessee and Alabama, the effect of the contract of association was to bind at least three, sometimes four and sometimes five of the defendants not to make a contract at all in those states for the sale and delivery of pipe from another state, and if the job were assigned as it might be to one living in a different state from the place of the contract and delivery, its effect would be to bind him not to sell and deliver pipe across state lines at less than a certain price. It thus appears that no sale or proposed sale can be suggested within the scope of the contract of association with respect to which that contract did not restrain at least three, often four, more often five and usually all of the defendants in the exercise of the freedom, which, but for the contract would have been theirs, of selling in one state pipe to be delivered from another state at any price they might see fit to fix.

Can there be any doubt that this was a restraint of interstate trade and commerce? Mr. Justice Field, in the *County of Mobile* v. *Kimball*, 102 U. S. 691, 696, said: "Commerce with foreign countries and among the states, strictly considered, consists of intercourse and traffic, and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities." In *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, a law of Tennessee, which imposed a tax on all "drummers" who solicited orders on samples was held unconstitutional in so far as it applied to the drummer

of an Ohio firm, who was soliciting orders for goods to be sent from Ohio to purchasers in Tennessee, on the ground that it was a tax on interstate commerce. In delivering the opinion of the court in that case, Mr. Justice Bradley said (p. 497), that a tax on the sale of goods or *the offer to sell them* before they are brought into the state, was clearly a tax on interstate commerce. He further said: "The negotiation of sales of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce."

The principle thus announced has been reaffirmed by the court in *Corson* v. *Maryland*, 120 U. S. 502; in *Asher* v. *Texas*, 128 U. S. 129; in *Stoutenburgh* v. *Hennick*, 129 U. S. 141, and in *Brennan* v. *Titusville*, 153 U. S. 289. The point of these cases was emphasized by the distinction taken in *Emert* v. *Missouri*, 156 U. S. 296, in which the validity of a law of Missouri, imposing a tax on peddlers, was in question. The plaintiff in error, convicted under the law of failure to pay the tax, was the selling agent of a New Jersey sewing machine manufacturing company, who carried the machine for sale with him in his wagon. It was held, that in such a case the machine having become part of the mass of property in the state, the tax on the peddler was not a tax on interstate commerce. If, then, the soliciting orders for, and the sale of goods in one state to be delivered from another state, is interstate commerce in its strictest and highest sense, such that the states are excluded by the Federal constitution from a right to regulate or tax the same, it seems clear that contracts in restraint of such solicita-

tions, negotiations and sales are contracts in restraint of interstate commerce. The anti-trust law is an effort by Congress to regulate interstate commerce. Such commerce as the states are excluded from burdening or regulating in any way by tax or otherwise, because of the power of Congress to regulate interstate commerce, must of necessity be the commerce which Congress may regulate and which by the terms of the anti-trust law it has regulated. We can see no escape from the conclusion, therefore, that the contract of the defendants was in restraint of interstate commerce.

The learned judge who dismissed the bill at the circuit, was of opinion that the contract of association only indirectly affected interstate commerce and relied chiefly for this conclusion on the decision of the Supreme Court in the case of *United States* v. *E. C. Knight Co.*, 156 U. S. 1. In that case the bill filed under the anti-trust law sought to enjoin the defendants from continuing a union of substantially all the sugar refineries of the country for the refining of raw sugars. The Supreme Court held that the monopoly thus effected was not within the law, because the contract or agreement of union related only to the manufacture of refined sugar and not to its sale throughout the country, that manufacture preceded commerce, and although the manufacture under a monopoly might, and doubtless would, indirectly, affect both internal and interstate commerce, it was not within the power of congress to regulate manufactures within a state on that ground. The case arose on a bill in equity filed by the United States under the anti-trust act, praying for relief in respect of certain agreements under which the

American Sugar Refining Company had purchased the stock of four Philadelphia sugar refining companies with shares of its own stock, whereby the American Company acquired nearly complete control of the manufacture of refined sugar in this country. The relief sought was the cancellation of the agreements of purchase, the redelivery of the stock to the parties respectively, and an injunction against the further performance of the agreements and further violations of the act.

The Chief Justice, in delivering the judgment of the court said:

"The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessity of life to the enjoyment of which by a large part of the population of the United States, interstate commerce is indispensable and that therefore, the general government in the exercise of the power to regulate commerce, may repress such monopoly directly, and set aside the instruments which have created it. . . . Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and it affects it only incidentally and indirectly. Commerce succeeds to manufacture and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which

commerce is governed or whenever the transaction is itself a monopoly of commerce. . . . The regulation of commerce applies to the subjects of commerce and not to matters of internal police. *Contracts to buy, sell or exchange goods to be transported among the several states*, the transportation and its instrumentalities and articles bought, sold or exchanged for the purpose of such transit among the states or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the state and belongs to commerce."

The chief justice then refers to the prior case of *Coe* v. *Errol*, 116 U. S. 517, in which it was held that logs were not made subjects of interstate commerce by the mere intent of the owner to ship them into another state, so that state taxation upon them could be regarded as a burden upon interstate commerce, until that intent had been carried so far into execution that "they had commenced their final movement from the state of their origin to that of their destination." *Kidd* v. *Pearson*, 128 U. S. 1, is also referred to. In that case it was held that a law of Iowa, which forbade the manufacture of spirituous liquor except for certain purposes was not in conflict with the commerce clause of the Federal constitution, although it appeared by proof that the liquor was to be manufactured only with intent to ship the same out of the state. The Chief Justice further said: "It

was in the light of well settled principles that the Act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the states of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts and conspiracies to monopolize trade and commerce among the several states or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the states or with foreign nations. The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce. . . . There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree." We have thus considered and quoted from the decision in the Knight case at length, because it was made the principal ground for the action of the court below, and is made the chief basis of the argument on behalf of the defend-

ants here. It seems to us clear that from the beginning to the end of the opinion, the chief justice draws the distinction between a restraint upon the business of manufacturing and a restraint upon the trade or commerce between the states in the articles after manufacture, with the manifest purpose of showing that the regulating power of Congress under the constitution could affect only the latter while the former was not under Federal control and rested wholly with the states. Among the subjects of commercial regulation by Congress, he expressly mentions "contracts to buy, sell or exchange goods to be transported among the several states," and leaves it to be plainly inferred that the statute does embrace combinations and conspiracies, which have for their object to restrain, and which necessarily operate in restraint of, the freedom of such contracts.

The citation of the case of *Coe* v. *Errol*, was apt to show that merchandise before its shipment across state lines was not within the regulating power of Congress and *a fortiori* that its manufacture was not, while *Kidd* v. *Pearson*, clearly made the distinction between the absence of power in Congress to control manufacturing merely because the manufacturer intends to add to interstate commerce with the product, and the power which Congress has to prevent obstructions to interstate transportation in the product when made. But neither of these cases controls the one now under consideration. The subject matter of the restraint here was not articles of merchandise or their manufacture, but contracts for sale of such articles to be delivered across state lines and the negotiations and bids preliminary to the making

of such contracts, all of which, as we have seen, do not merely affect interstate commerce, but are interstate commerce. It can hardly be said that a combination in restraint of what is interstate commerce does not directly affect and burden that commerce. The error into which the circuit court fell, it seems to us, was in not observing the difference between the regulating power of Congress over contracts and negotiations for sales of goods to be delivered across state lines, and that over the merchandise, the subject of such sales and negotiations. The goods are not within the control of Congress until they are in actual transit from one state to another. But the negotiations and making of sales which necessarily involve in their execution the delivery of merchandise across state lines are interstate commerce and so within the regulating power of Congress even before the transit of the goods in performance of the contract has begun.

The language of the chief justice in the last passages quoted above from his opinion upon which so much reliance was placed by the circuit court and the defendants' counsel at the bar is to be interpreted by the facts of the case before the court. The statement in the opinion that Congress did not intend by the anti-trust act to limit and restrict the rights of persons and corporations in the mere acquisition, control or disposition of property or to regulate the prices at which such property should be sold, or to make criminal the acts of persons or corporations in the acquisition and control of property which the states of their residence or creation sanctioned or permitted does not imply that Congress did not intend to strike down any combination which had

for its object the restraint and attempted monopoly of trade and commerce among a given number of states in specified articles of commerce and the resulting power to regulate prices therein. The obstacle in the way of granting the relief asked in *United States* v. *E. C. Knight Co.*, was (to use the language of the chief justice) that "the contracts and acts of the defendant related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the states or with foreign nations." The Supreme Court distinctly adjudged that "what the law struck at was combinations, contracts and conspiracies to monopolize trade and commerce among the several states or with foreign nations." That the defendants in the present case combined and contracted with each other for the purpose of restraining trade and commerce among the states covered by their agreement, in the articles manufactured by them, is too clear to admit of dispute. In the E. C. Knight Company case, there was, the Supreme Court said, "nothing in the proofs to indicate any intention to put a restraint upon trade or commerce." In the present case the proofs show that no one of the companies in this pipe-trust combination was allowed to send its goods out of the state in which they were manufactured except upon the terms established by the agreement. Can it be doubted that this was a direct restraint upon interstate commerce in those goods?

To give the language of the opinion in the Knight case the construction contended for by defendants, would be to assume that the court after having in the clearest

way distinguished the case it was deciding from a case like the one at bar for the very purpose of not deciding any case but the one before it, then proceeded to confuse the cases by using language which decided both. We can not concur in such an interpretation of the opinion.

Counsel for the defendants also find in the language of Mr. Justice Peckham, in the case of the *United States* v. *The Freight Association*, 166 U. S, 290, 313, 326, an argument against our conclusion in this case. The question in that case was whether the anti-trust act applied to railroad companies which combined in establishing traffic rates for the transportation of persons and property. It was vigorously contended on behalf of the railroad companies that the act was never intended to apply to them, because Congress had already provided for their regulation by the interstate commerce law. In meeting this position, Mr. Justice Peckham used the following language (p. 313): "We have held that the Trust Act did not apply to a company engaged in one state in the refining of sugar under circumstances detailed in the case of *United States* v. *E. C. Knight Company*, 156 U. S. 1, because the refining of sugar under those circumstances bore no distinct relation to commerce between the states or with foreign nations. To exclude agreements as to rates by competing railroads for the transportation of articles of commerce between the states would leave little for the act to take effect upon." Again, upon page 326, Justice Peckham repeats the same idea: "In the Knight Company case (*supra*) it was said that this statute applied to monopolies in restraint of interstate or international trade or commerce and not to

monopolies in the manufacture even of a necessary of life. It is readily seen from these cases that if the act does not apply to the transportation of commodities by railroads from one state to another or to foreign nations, its application is so greatly limited that the whole act might as well be held inoperative."

This is not a declaration that cases might not arise within the statute which were not combinations of common carriers in relation to interstate transportation. The language used means nothing more than that if such combinations were excluded from the effect of the act, the great and manifest scope for the operation of a Federal statute on such a subject would be denied to it. To give the language more weight would be to violate the first canon for the construction of a judicial opinion laid down by Chief Justice Marshal in *Cohens* v. *Virginia*, 6 Wheaton, 264, 399, 340: "It is a maxim, not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason for this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all cases is seldom completely investigated."

In re Greene 52 Fed. Rep. 104, cited for the defendants, is to be distinguished from the case at bar in exactly

the same way as the Knight Company Case. The indictment against Greene, drawn under the anti-trust act, charged him with being a member of a combination to acquire possession and control of seventy-five per cent of the distilleries of the country for the purpose of fixing the price of whisky and controlling the trade in it between the States. The immediate object of the combination was a monopoly in manufacture. The effect upon interstate trade in whisky was as indirect as was the monopoly of the refining of sugar in the Knight case upon interstate trade in that article.

The case of *Dueber Watch Company* v. *The Howard Co.*, 35 U. S. Ap. 16, can not be regarded as an authority upon either of the questions considered in this case, because of the division of opinion among the judges. It was a suit brought by a watch manufacturing company against twenty other companies to recover damages for a boycott of the plaintiff. The averment was that the defendants had agreed not to sell any goods manufactured by them to any person dealing with the plaintiff and had caused this to be known in the trade, and that they fixed an arbitrary price for the sale of their goods to the public and because plaintiff's competition interfered with their maintaining this price, they were using the boycott against plaintiff to stifle competition. The pleadings were not drawn with care to bring the case within the anti-trust law. The questions arose on demurrer to the bill. Judge Lacombe held that the facts stated gave rise to no cause of action; Judge Shipman held that the averments were not sufficient to show that the trade restrained was interstate, and Judge Wallace dissented on the ground that a

cause of action was sufficiently stated and that the restraint was upon interstate commerce. These varying views decided the case, but they certainly furnish no precedent or authority.

There is one case which seems to be quite like the one at bar. It is the case of *United States* v. *Jellico Mountain Coal & Coke Co.*, 46 Fed. Rep. 432, a decision by Judge Key at the circuit. The owners of coal mines in Kentucky entered into a contract of association with coal dealers in Nashville by which they agreed that the mine owners should only sell to dealers who were members and the members should only buy from mine owners who were members, and that the dealers should sell at certain fixed prices, of which the mine owners should receive a proportionate part, after payment of freight, and that prices might be raised by a vote of the association, in which case the addition to the price should be divided between the dealers and the mine owners. The contract recited that it was intended to establish and maintain the price of coal at Nashville. It was held to be an attempt to create a monopoly in the interstate trade in coal between Kentucky and Nashville, Tenn., and it was enjoined.

It is pressed upon us that there was no intention on the part of the defendants in this case to restrain interstate commerce and in several affidavits the managing officers of the defendants make oath that they did not know what interstate commerce was, and, therefore, that they could not have combined to restrain it. Of course the defendants, like other persons subject to the law, can not

plead ignorance of it as an excuse for its violation. They knew that the combination they were making contemplated the fixing of prices for the sale of pipe in thirty-six different states, and that the pipe sold would have to be delivered in those states from the four states in which defendants' foundries were situate. They knew that freight rates and transportation were a most important element in making the price for the pipe so to be delivered. They charged the successful bidder with a bonus to be paid upon *the shipment* of the pipe from his state to the state of the sale. Under their first agreement, the bonus to be paid by the successful bidder was varied according to the state in which the sale and delivery were to be made. It seems to us clear that the contract of association was on its face an extensive scheme to control the whole commerce among thirty-six states in cast iron pipe, and that the defendants were fully aware of the fact whether they appreciated the application to it of the anti-trust law or not.

Much has been said in argument as to the enlargement of the Federal governmental functions in respect of all trade and industry in the states, if the view we have expressed of the application of the anti-trust law in this case is to prevail, and as to the interference which is likely to follow with the control which the states have hitherto been understood to have over contracts of the character of that before us. We do not announce any new doctrine in holding either that contracts and negotiations for the sale of merchandise to be delivered across state lines are interstate commerce (see cases above cited), or that burdens

or restraints upon such commerce, Congress may pass appropriate legislation to prevent and courts of the United States may in proper proceedings enjoin. *In re* Debs, 158 U. S. 564. If this extends Federal jurisdiction into fields not before occupied by the General Government, it is not because such jurisdiction is not within the limits allowed by the Constitution of the United States.

The prayer of the petition that pipe in transportation under the contract of association be forfeited in a proceeding in equity like this is, of course, improper, and must be denied. The sixth section of the anti-trust act, after providing that property owned and in transportation from one state to another or to a foreign country under a contract inhibited by the act, "shall be forfeited to the United States," continues, "and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law." This requires a like procedure to that prescribed in Sections 3309–3391, R. S., and involves a trial by jury. The only remedy which can be afforded in this proceeding is a decree of injunction.

For the reasons given the decree of the circuit court dismissing the bill must be reversed with instructions to enter a decree for the United States perpetually enjoining the defendants from maintaining the combination in cast iron pipe described in the bill and substantially admitted in the answer, and from doing any business thereunder.